

IN THE SUPREME COURT OF FLORIDA

---

Case No. SC03-1171

---

INQUIRY CONCERNING  
A JUDGE, NO. 02-487

RE: GREGORY P. HOLDER

---

APPENDIX TO THE JUDICIAL QUALIFICATIONS COMMISSION'S  
ANSWER BRIEF

---

Thomas C. MacDonald, Jr.  
Florida Bar No. 049318  
1904 Holly Lane  
Tampa, Florida 33629  
(813) 254-9871  
(813) 258-6265 (Facsimile)

General Counsel for the  
Florida Judicial  
Qualifications Commission

Charles P. Pillans, III  
Bedell, Dittmar, DeVault,  
Pillans & Cox, P.A.  
Florida Bar No. 0100066  
101 East Adams Street  
Jacksonville, Florida 32202  
(904) 353-0211  
(904) 353-9307 (Facsimile)

Special Counsel to the Florida  
Judicial Qualifications  
Commission

## INDEX TO APPENDIX

Air War College Research Paper.....	Tab 1
Respondent's Answer to Formal Charges.....	Tab 2
Respondent's Pre-Hearing Statement.....	Tab 3
Respondent's Third Amended Pre-Hearing Statement.....	Tab 4
Respondent's Fourth Amended Pre-Hearing Statement.....	Tab 5
Order on Entitlement to Costs.....	Tab 6
Respondent's Motion for Award of Attorney's Fees.....	Tab 7
Fax to Judge Gregory Holder.....	Tab 8
Excerpts of Trial Testimony of Gregory P. Holder.....	Tab 9
Excerpts of Trial Proceeding, June 14, 2005.....	Tab 10

TAB 1

AIR WAR COLLEGE DIRECTORATE OF NONRESIDENT STUDIES  
AIR UNIVERSITY

8<sup>TH</sup> Edition /

AN ANALYSIS OF THE ANGLO-AMERICAN  
COMBINED BOMBER OFFENSIVE IN EUROPE  
DURING WORLD WAR II, 1942-1945 /

by

~~Gregory P. Holder~~  
Lt Col, USAFR

Circuit Judge  
Hillsborough County Courthouse  
419 Pierce St., Rm. 370  
Tampa, FL 33602

Seminar No. 059B /

A RESEARCH PAPER SUBMITTED TO THE FACULTY

IN

FULFILLMENT OF THE VOLUME 1

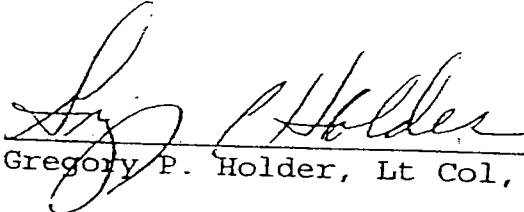
WRITING ASSIGNMENT

January 1998 /



## CERTIFICATE

I have read and understand the Academic Integrity Section of the Program Guide. I certify that I have not used another student's research work and that the creative process of researching, organizing, and writing this research report represents only my own work. I have read the instructions regarding purpose, scope, format and content of this effort and have accomplished the research paper in accordance with the appropriate Research Report Review Checklist.

  
Gregory P. Holder, Lt Col, USAFR

## DISCLAIMER

This research report represents the views of the author and does not necessarily reflect the official opinion of the Air War College or the Department of the Air Force. In accordance with Air Force instruction 51-~~2~~03, it is not copyrighted, but is the property of the United States Government and is not to be reproduced in whole or part without permission of the Commandant, Air War College, Maxwell Air Force Base, Alabama.

# TABLE OF CONTENTS

SECTION	PAGE
CERTIFICATE AND DISCLAIMER.....	ii
I INTRODUCTION.....	1
II CONFLICT AND CAMPAIGN BACKGROUND.....	2
III STRATEGY ANALYSIS.....	5
What is it all about?.....	5
Is the National Military Strategy Tailored to Meet the National Political Objective?.....	5
What are the Limits of Military Power?.....	6
What are the Alternatives?.....	7
How Strong is the Homefront?.....	8
Does Today's Strategy Overlook Points of Difference and Exaggerate Points of Likeness Between Past and Present?.....	9
IV AIR CAMPAIGN EXECUTION.....	10
Air Campaign Plan.....	10
Air Campaign Phases and Dates.....	10
Forces and Targets.....	11
Results.....	13
V AIR CAMPAIGN EVALUATION.....	15
Objective.....	15
Offensive.....	15
Mass.....	16
Maneuver.....	16
Security.....	16
Surprise.....	17
Unity of Command.....	17
Economy of Force.....	18
Simplicity.....	18
VI SUMMARY AND STRATEGIC/DOCTRINAL IMPLICATIONS.....	19
Summary.....	19
Doctrinal Implications.....	20
BIBLIOGRAPHY.....	22

## SECTION I

### INTRODUCTION

The Anglo-American Combined Bomber Offensive (hereinafter referred to as "CBO") during World War II was selected as a strategy of massive and systematic bombing of German war-related factories and cities in order to destroy the German military industrial and economic system and to undermine the morale of the German people "to a point where their capacity for armed resistance would be fatally weakened." (8:135; 9:97; 10:28;

1/2 of thesis

1:80) This paper analyzes the military strategy of the CBO using the six basic questions history suggests that strategists must ask before war (the "Crowl Questions") and then evaluates the air campaign strategy using the "Principles of War" as a framework. (3:24; 20:123)

to show what?

WHY CBO WAS SUCCESS OR

FAILURE

OTHER HALF  
OF THESIS.

This framework is useful to analyze the development of a historical military strategy by examining the impact of factors, beginning with the threat confronting a nation, or coalition of nations, on the national interests involved; then how that threat influences the political and military leadership, and in turn, the national policy, in formulating the objective and ultimate strategy. (3:28; 20:123) This analysis will use the framework to show how various factors influenced the development of the strategy of the CBO, why that strategy was used, and the reasons for its successes and its failures.

YOU NEVER GAVE ANY, UNLIKE 1ST PARAGRAPH WHICH DESCRIBES WHY IT WAS SELECTED.

HALF A THESIS. ALSO MISSING SCOPE OF PAPER A SECTION BY SECTION ACCOUNT

## SECTION II

### CONFLICT AND CAMPAIGN BACKGROUND

World War II began September 1, 1939, when Germany invaded Poland, and ended September 2, 1945, with the signing of peace accords aboard the USS Missouri in Tokyo Bay. The genesis of the conflict centered on the ethnocentric policy concepts formulated by Adolph Hitler when he became Chancellor of Germany in 1933.

(14:26; 15:566,574)

*— ALSO REASON TO TERMS OF VERSAILLES TREATY*

In the years preceding the war, Hitler's racist ideology and his doctrine of acquiring space (land) to support what he viewed as the superior race focused the attention of Germany primarily on Poland, Russia, Austria and France. Germany's world trade and naval ambitions also posed a direct threat to Great Britain.

(14:27-31) An admirer of Mussolini's fascist agenda, Hitler formed an alliance with Italy, with an eye toward aiding Italy in its expansionist program and gaining Italian support in the German annexation of Austria and the conquering of other European states.

(15:579) Within two years after its invasion of Poland, Germany was at full scale war against the Allied powers including Russia, France and England.

*Who? Where? When? You haven't even mentioned this Axis Power?*

After the direct attack by the Axis, the United States entered the war in support of the Allied coalition of powers. It is fair to say that overall military doctrine of the Allied powers in World War II was based in significant part, if not wholly, upon the policy announced by President Roosevelt that the

Allies would insist upon unconditional surrender from the Axis powers. This reportedly was an unpremeditated comment made at a press conference, a remark which some have criticized as being careless and politically motivated, and one which initiated a policy liable to prolong the war (12:151; see also, 6:9)

Regardless of one's view as to whether the President's comment was careless or policy well thought out, it became the overriding Allied aim (6:4)

Since the American national interest required the survival of Great Britain as a great power, one of the key strategic decisions of the United States was that initial efforts toward Japan would be limited to containment and harassment until Germany was defeated (6:3, 5) ALLIES ALSO Limitations on space prevented a detailed discussion here of the overall air, ground and maritime strategy of the entire war, but it is sufficient for the purposes of the analysis to note that

The Allied offensive in Europe was to include economic pressure through blockade, a sustained air offensive against German military power, early defeat of Italy, and the buildup of forces for an eventual land offensive against Germany. As rapidly as possible, the Allies were to achieve superiority of air strength over that of the enemy, particularly in long range striking forces. (5:209; quotes in original)

(200)

Achieving long range striking air superiority over Germany was to be accomplished primarily through strategic bombing, a (then) new technique of warfare defined by General Carl Spaatz, one of the leading air commanders in World War II and first Chief of Staff of the autonomous United States Air Force, as, "an



independent air campaign, intended to be decisive, and directed against the essential war-making capacity of the enemy." (19:20)

In Europe that air campaign was carried out through the CBO, a product of a directive issued as the result of the conference held in <sup>SAN</sup> 1943 in Casablanca. At this conference, U.S. President Franklin D. Roosevelt, British Prime Minister Winston Churchill, and the Combined Chiefs of Staff of the American and British armed services announced that they had, in essence, established a formula for ending the war. (12:151)

Whether the CBO itself was "decisive" is to this day the subject of some disagreement, but in fact, the effort was frustrated to one degree or another by various factors, including, among others, delays in obtaining adequate long-range escort fighter support, decisions by political and top-level military leaders to invade North Africa to ensure control of the Mediterranean, differing interpretations of the Casablanca Directive, and differences between the United States and British as to targeting and methods of bombing. (6:13, 24, 32, 86;

8:136, 139; see also, 18:H12)

YOU NEED MORE BACKGROUND ON  
MILITARY LEADERSHIP DURING THIS TIME  
AND HOW DOCTRINE WAS IMPACTED IN  
YEARS OF WAR PRIOR TO 1943 -- THIS  
WOULD HAVE A BIG IMPACT ON DOCTRINE  
ESPECIALLY FOR RAF. MANY SPECIFICS  
MISSING I.E. ARCAHA CONF, RAF DAY BOMBING  
EXPERIENCE 1942, EAKER, HARRIS, AWPB-1, AWPB-

### SECTION III

#### STRATEGY ANALYSIS - IS OF CBO NOT WW II!

##### What is it About?

Why CBO? ① 2nd front  
TO RELIEVE  
PRESSURE ON  
RUSSIANS AND  
KEEP THEM IN  
WAR

② Prep for  
LAND  
INVASION

③ "DO  
SOMETHING"  
FOR POLITICAL  
PERSONS  
UNTIL  
READY  
TO  
INVADE

In addition to ensuring the survival of Great Britain (6:1), clearly the American national interest in preventing Axis influence, if not expansion, in the Western Hemisphere was a prime factor which shaped national policy and the objective of the war. The interest was truly national in scope, held by virtually every American man, woman and child. As expressed by one who was a child during the war: "In our vivid expectation losing World War II would mean being occupied. Even if we were not taken over, we had an only somewhat less horrendous anxiety that we would be bombed. The more accurate fear of losing the itself was supplanted as a personal preoccupation by a kind of monomaniacal focus on the war and the drive to win it." (7:H5)

#### Is the National Military Strategy Tailored to Meet the National Political Objectives?

After considering the national interests and policy objectives that would be served by military action, the asablanca Directive appeared to be straightforward. "[The] aggressive destruction and dislocation of the German military, industrial and economic system, and the undermining of the morale of the German people to a point where their capacity for armed resistance is fatally weakened." (9:252) The intent of the asablanca Directive was not so obviously expressed, however, as

WAS THIS  
AMENDED?  
WHEN?  
TO SAY  
WHAT?  
SIGNIFICANCE

evidenced by the fact that by the time the Directive was adopted by the Combined Chiefs of Staff on May 18, 1943, a sentence had been added, apparently to clarify what was meant by "fatally weakened". "This is construed as meaning so weakened as to permit initiation of final combined operations on the Continent."

(9:257)

In an attempt to clarify "fatally weakened," the added sentence created more interpretations and raised further doubts as to the basic strategic purpose of the CBO. (9:257) However, the American strategy and supporting operations focused on those aspects of the Directive that targeted "the progressive destruction and dislocation of the German military, industrial, and economic system . . . as a path to the fatal weakening" through the use of selective daytime precision bombing. (9:257)

The CBO was executed to achieve the overriding goal of the total defeat of the enemy through the use of both daytime and nighttime bombing round the clock. (6:10; 19:121)

#### What are the Limits of Military Power?

The Americans initially supported the CBO for political reasons. President Roosevelt felt that American isolationism would be overcome through the low casualties and relatively low costs offered by the bomber alternative. (14:102-105) However,

the full impact of the Allied resources was depleted, or at least delayed, by the diversion into North Africa in late 1942 which committed many heavy bombers intended for use in Europe. (9:271;

Ah, Gosh!

SIGNIFICANCE?  
GETS BACK TO  
PRE-WAR DOCTRINE  
YOU HAVE TO  
DEV. IN  
SECTION!

WAS THIS BY DESIGN OR RESULT OF  
COMPROMISE?

THIS IS

HISTORICAL  
EXTRANEAL  
INFO NOT  
CBO WHICH  
IS TOPIC OF  
THIS SECTION



13:103) Aside from these diversions, the Americans suffered unacceptable heavy losses during unescorted daylight bombing runs, despite changes in combat tactics. (10:231) This problem was eventually remedied by the deployment of the P 51 (Mustang), but it was March 1944 before there were sufficient Mustangs available to begin escorting large daylight raids into the heart of Germany. (10:231)

REMEMBER THE  
IS PRE-CBO  
C.E. CAMPAIGN  
SELECTION  
THIS WAS NOT  
KNOWN AT  
THE TIME  
C.E. JAN 43'

Additionally, the strategic air forces were frustrated by the requirement to divert efforts to targets not considered vital to the German war economy, such as German submarine bases along the French coast. (14:116; 10:231; 13:153) Taking the resources

WHAT UNITS  
IN CBO FACE?  
C.E. WERE  
THERE

of the Allies in mind, the resources of Germany were targeted according to a set of established priority targets. (9:251) The goal was to arrest the German strengths with carefully planned strategies utilizing the combined forces and resources of the Allied forces.

ENOUGH  
PLANES +  
CREWS TO  
CANNOT  
BOMB  
RIGHT  
AWAY?  
WHY AIR  
POWER,  
WHY NOT  
A B-DAY,  
RIGHT  
AWAY?

#### What are the Alternatives?

What if the goal to arrest the German strengths according to the prescribed plans failed? Although there were operation plans, staff studies, war game scenarios and solutions, these were all based upon conjecture and speculation. (3:27) Blueprints were drawn up stipulating in detail the location, movement, and preferred courses of action for vast numbers of men, ships, planes, tanks, guns, and supplies. (3:27) Nevertheless, the superior strategist must above all else be flexible. (3:27) The

TO DO WHAT?

WHAT ABOUT  
1946?

COULD ALLIES  
HAVE WAITED  
TILL LENDY  
FOR IS-DAY?  
WHY NOT?  
DEVELOP!

POINT EARLIER!

WHY WAS THIS NECESSARY?  
EXPLAIN.

MEANING WHAT? DEFEAT OF GERMANY? DID BRITS & AMERICANS FEEL  
THE SAME  
WAY ABOUT  
BOMBING  
GERMAN  
CITIES?  
WHY?  
IMPACT ON  
DOCTRINE? CBO

... was executed principally in three phases during 1943 and  
1944. (8:146) Until adequate escort fighter protection for long  
range bombing runs were provided, there were unacceptable losses.  
Although the CBO inflicted immense damage to most of the places  
attacked, the German war economy was relatively unaffected.  
(6:113; 8:146) Further, although the weight of bombs dropped on  
Germany in 1944 was five times more than the year before, German  
armaments production actually increased by 50 per cent. (8:153)

Such facts do not necessarily suggest the CBO was a failure.  
Allied strategic bombing diverted an enormous amount of German  
manpower and material which otherwise could have been used on the  
Eastern and Western fronts. (8:153) In so doing, as stated by  
Major General Hansell, at the very least the CBO provided the  
precondition for the invasion of Europe. (9:116)

How Strong is the Home front?

The societal values and national resources of each ally in a  
coalition of powers provide input to the political leadership  
developing the policy which governs the military and determines  
the objective. For both the war in general and the CBO campaign,  
the key societal values of the various Allied powers were  
sufficiently similar that they may be fairly considered to be  
shared. These societal values had a direct influence on the  
national resources available to conduct the war and the CBO  
campaign. Civilian life in World War II was "one unbroken  
stretch of national resolve and sacrifice" which created what has

been described as "an unmatched economic and technological colossus." (11:H6; see also, 7:114) As one observer noted: "By

war's end, U.S. plants were turning out 60,000 warplanes and a thousand cargo ships a year. In all, the U.S. war effort

produced 296,601 aircraft, 71,060 ships, 86,388 tanks. This miracle of production, as much as manpower using the weapons

coming off the lines, won the war." (11:H7) Although the numbers

may differ, the societal values of English citizens had a similar impact on British national resources available for the war.

but different! WHY? DEVELOP!  
Overall and the CBO campaign. Undoubtedly those "inputs" led the American and British political leadership to develop the resolute

policy for the total defeat of their enemies. BUT IN DIFFERENT  
WAYS WHY?  
Does Today's Strategy Overlook Points  
of Difference and Exaggerate Points of  
Likeness Between Past and Present?

Theories of air power were under constant development after

World War I. No power "ignored, or could afford to ignore, the  
advent of air power." (14:18; 16:20-25) The Axis threat impacted  
SO WHAT DID AIR POWERS LEADERS SAY?

military leadership thinking on force structure, technology and

doctrine. American doctrine adopted the untested principles

underlying the mass-bombing strategies of Mitchell and Douhet--

"that in modern total war, civilians and armed forces were

inseparably linked in national war machines." (16:33) AND . . .

YOU USE 6 CROWL QUESTIONS BUT  
YOUR FOCUS IS OFF FOR THIS

SECTION AS NOTED.

THIS ISN'T  
TOPIC FOR  
THIS SECTION  
IT IS JAN 43'  
WHY DID HAVE  
NOT TO GO  
WITH  
CBO?  
THAT SHOULD  
BE FOCUS  
OF THIS  
SECTION

USINT-CROWL'S  
QUESTIONS TO  
ANALYZE.

## SECTION IV

### AIR CAMPAIGN EXECUTION

#### Air Campaign Plan

World War II was the first extensive use of air power on both the tactical and strategic level. (2: 214) The CBO Plan concluded that "the destruction and continued neutralization of some sixty (60) targets would gravely impair and might paralyze the western Axis war effort." (9: 255) From the original potential target list, six systems, comprising seventy-six precision targets, were selected. They included as principal objectives the following facilities: German aircraft industry; submarine construction yards and bases; ball bearings; oil, synthetic rubber and tires; and, military transport vehicles: (9: 255).

WAS THERE  
AN  
INTERMEDIATE  
TARGET?  
WHAT?  
WHY?  
EXPLAIN

#### Air Campaign Phases and Dates

The strategic air war in Europe has been described as having <sup>WHICH IS IT?</sup> three or four phases: first, during 1942 as the U.S. attempted to organize its air effort; second, during 1943 and the first half of 1944, establishing allied air superiority and ~~laying the way for a successful cross-channel invasion~~ (800 U.S. heavy bombers on hand by July, 1192 by October and 1746 on hand by January 1944); <sup>c.c. 1945 Point earlier</sup> ~~and finally, after June 1944, as a purely strategic air campaign~~ in support of the Allied invasion (2702 U.S. heavy bombers on hand). (9:255; 10:228) These last two phases of the strategic air war in Europe began to combine the

activities of the United States and England in a coordinated effort to destroy the German military, industrial, and economic system as well to fatally weaken and undermine German morale and resistance. *Goult?*

### Forces and Targets

The primary forces used in the CBO were the RAF Bomber Command flying the Lancaster, the B-24 "Liberator," and B-17 "Flying Fortresses" of the American Eighth Air Force. Consistent with their air warfare philosophy, the British had developed the large Lancaster and heavy night bombers, while the American bombers were designed and built for precision daytime bombing. *WAS THIS THE GERMANS LOSING POWER? WHY CHANGE?*

(19; 121)

*You've yet to develop why THE DIFFERENCE*

In January 1943, the Army Air Forces had only 12 heavy bombardment groups and the maximum strength of 62 heavy bomber groups was attained in May 1944. "The total of first-line B-17s and B-24s deployed against Germany increased from 413 in January 1943 to a maximum of 5,072 in March 1945." (5:77) The RAF Bomber Command strength increased from 515 light, medium, and heavy bombers in January 1943 to a total of 1,069 in April 1945. (5:77)

The first raid of the CBO took place on August 17, 1942 with 12 B-17s attacking the French city of Rouen dropping 18.5 tons of bombs. This was followed two days later with an attack on Abbeville. (1: 83-84) By early October 1942, American forces had flown 13 missions against German targets in France, Belgium and Holland. On October 9, 1942, American forces launched 108

*HOW COULD THIS BE? CASABLANCA*

*WASN'T EVEN UNTIL JAN 43*

*THIS IS ALL BACKGROUND INFO SECTION II*

bombers including B-17s and B-24s against Lille. Although the Allied invasion of North Africa cost the CBO nearly 100 planes, attacks continued that Fall on submarine facilities. However, by the end of 1942, the daylight offensive had flown only 27 missions with not one bomb dropped on German soil. (1:85-86) *ditto this!*

Subsequent to the Casablanca Directive, on January 27, and again on February 26, 1943, Allied bombers attacked the German city of Wilhelmshaven. Not to be outdone, on March 5, 1943, 367 RAF planes attacked Essen and on March 18, 1943, 97 American bombers attacked Vegesack in northwestern Germany marking according to General Eaker, "a new chapter" in daytime, high-level precision bombing. (1:90) In late June, Allied Forces launched Mission No. 69 attacking the U-boat pens at Saint-Nazaire with 191 bombers and using 50 bombers to attack a German airfield near Brussels. *Source? Common Knowledge? Your own idea? THEN CITE!*

In July, Allied Forces began around the clock bombing of Hamburg with 740 RAF bombers beginning the attack followed by 68 B-17s and then 722 RAF bombers on the next wave. These actions were repeated days later and the American forces attacked the German naval base at Trondheim as a diversion. Pressing on preparing for the Allied invasion of Europe, In August 1943, three massive U.S. raids took place on Ploesti (oil refineries), Regensburg (Messerschmitt plant) and Schweinfurt (ball bearings). On August 17, 1943, RAF bombers attacked the city of Peenemunde followed five days later with an attack on Berlin itself. *NEVER DEV. HOW THIS CAME ABOUT! SUCCESS/FAIL AND...? WHAT RESULTS? IMPACT? DEVELOP!*

The Americans waited until October 14 to again attack Schweinfurt with 291 B-17s and again suffered severe losses. After this, General Eaker halted American raids deep into Germany while the RAF continued its night bombing attacks. On November 18, 1943, the British launched the campaign known as the Battle of Britain lasting four and one-half months including 35 major raids using an average of more than 500 bombers per mission. Nineteen of the raids were directed against German cities with 16 missions against Berlin itself. (1: 136-137)

#### Results

As Major General Orvil Anderson stated: "If you will only let experience be your teacher, you can have any damn lesson you want." (5:75) An analysis of the Anglo-American Combined Bomber offensive in Europe during World War II clearly shows that force structure, air war doctrine and technology all affected the timing and ability to attain the objective of the CBO.

Ultimately, the object of the CBO was to accomplish as much destruction of the enemy as cheaply as possible. With this objective comes the realization that this goal could only be achieved by combined operations between the Army, Navy, and the Air Forces. (14:203; 5:75) The Allied forces practiced a general air strategy involving the pursuit of all four major aspects of air doctrine simultaneously; air defense, strategic bombing, naval cooperation and air support of ground troops (14:204)

Although the concept of strategic warfare had been advanced

Why?

DEFINE!

Why?

Source?

PENDING WHAT?

CONNECT THE DOTS!

WRINK! BATTLE OF BRITAIN WAS SUMMER 1940!

BERLIN IS WHAT I THINK YOU MEAN!

WHO WAS?

SO DEVELOP! How?

THIS DOESN'T MAKE ANY SENSE!  
With this  
COMPARES TO WHAT?

prior to the CBO, the scope of this operation and the general "strict" adherence to its underlying plans resulted in the overwhelming success of allied forces. (9:273)

WHAT WAS BIG-WEEK?

HOW WAS GAF DEFEATED?

HOW DID CBO SUPPORT OPERATION OVERLORD?

WHAT WAS THE -P-51? IT'S ROLE?

WHEN DID CBO END? WHY?

DID CBO EVER ACHIEVE STRATEGIC  
OBJECTIVES? WHEN?

OBVIOUSLY A LOT LEFT UNDEVELOPED --  
AND NOT MINOR DETAILS EITHER!

MARGINAL SECTION AT BEST!



## SECTION V

### AIR CAMPAIGN EVALUATION

#### Objective

The military strategist uses the principles of war to analyze military actions through the use of an operational framework. (20:123; 21:213-215) The strategic military objective of the CBO was, according to the Directive, the "fatal weakening" of the German military system to allow for the allied invasion of Europe. (9:258) While there was some confusion over the meaning of the Directive, General Arnold welcomed the plan as it allowed him to "fight off the demands of naval and military commanders in other theaters for more and more planes, and get his heavy bombers concentrated in Europe." (6:91) Moreover, strategic bombing allowed Allied Forces to selectively destroy those elements which were most vital to Germany's war potential, and to penetrate deep into Germany to destroy those elements wherever they were located. (19:276)

*EXPLAIN! YOU HAVEN'T YET!*

*WHAT ABOUT WITHIN THEATER EVEN WITHIN THE ALLIED AIR FORCES?*

*BUT YOU NEVER SAID HOW OR HARDLY EVEN WHAT!*

#### Offensive

One could reasonably question whether all efforts of the offensive were directed toward a clearly defined common goal given the diversion of resources to tactical targets and the subsequent effect on attainment of the objective. (9:258) The diversion of forces to the Mediterranean resulting from political pressure resulted in only 800 bombers or 66% of the planned English buildup being available. (9:261) Moreover, approximately

*NOT BASED ON YOUR "DEVELOPMENT"*

three-eighths of the bomb tonnage delivered by U.S. Air Forces in Europe were diverted from the primary targets of the CBO and applied to other targets. *Source? Did CBO TAKE THE OFFENSIVE?*

#### Mass

*ISNT STRATEGIC BOMBING BY ITS VERY NATURE OFFENSIVE?*

In the context of overall strategy, the U.S. should have committed the majority of its national power to those regions where the threat to vital security interests is greatest. (20:126) The CBO clearly evidenced the fact that strategic bombing is the most powerful instrument of war through "its capacity to bring all its forces from widely distributed bases simultaneously to focus on single targets. Such concentration of combat power has never been possible before." (19:276-277)

*WHEN WAS "CRITICAL MASS" ATTAINED, IF EVER? DEVELOP!*

#### Maneuver

As General Starry stated: "[I]n the strategic sense, this principle has three interrelated dimensions--flexibility, mobility and maneuverability." (20:127) Although strategic bombing has this principle as its basis, the CBO in its greatest sense failed to capitalize on this principle given the delay in the delivery of heavy bombers, the diversion of forces to North Africa and errors with respect to the priority given to various target systems. (6:92; 9:260-264; 17:56)

*HOW SO? EXPLAIN!*

#### Security

Security enhances flexibility by reducing vulnerability to hostile acts, influence or surprise. (20:128) Allied forces suffered heavy losses during the campaign due to technological

MEANING WHAT? SPECIFICS PLEASE!

advances made by the German war machine as evidenced by the heavy losses suffered by American forces at Ploesti and Peenemunde.

The early warning network developed by the Germans assured the loss of the element of surprise during these operations. (1:131-133) Perhaps more importantly, the Germans modified their tactics

ultimately halting American bombing within Germany during the

Fall of 1943. *Source!*

THESE TWO DON'T LIVE! WHICH IS?

#### Surprise

The ability to strike the enemy without observation creates opportunities. The CBO clearly took Germany by surprise given the unprecedented rapid deployment of U.S. combat forces into England. *Source!*

More importantly, the initial success enjoyed by the Allied bomber offensive was due in large part to the element of surprise fully utilized by General Eaker. *Source?*

#### Unity of Command

"For every objective, there should be unity of effort under one responsible commander." (20:127) In October 1941, General Spaatz had formally proposed that GHQ be eliminated and that overall command be delegated to the Army Chief of Staff. The Air War Plans Division proposed that "coordinate ground, air, and naval services be created, with unity of command to be secured by a common head of all armed services, who would report directly to the President. . . ." (5:63) Thus, unity of command could be ensured. This plan was rejected despite General Marshall's belief that "there must be one man in command of the entire

WHAT ABOUT FOR AAF IN EUROPE?

DID IT HAVE UNITY OF COMMAND

HOW?  
DID ALLIED EFFORT HAVE UNITY OF C

— Did THIS HAPPEN? c.e. OVERLOOK!  
1ST MENTION

theater--air, ground and ships." (5:64) The Arcadia conference ultimately answered the question by establishing the Combined Chiefs of Staff, a composite organization of the British chiefs of staff and their American counterparts. DID THEY EXERCISE COM. DECISIONAL CONTROL?

Economy of Force

There is much debate as to whether the CBO defines the principle of Economy of Force due to the diversion of assets previously mentioned. While strategic bombing itself allows the capacity to concentrate on a limited number of vital targets rather than dispersing its force on objectives of secondary importance, the Allies failed to appreciate or follow this principal by diverting forces, delaying forces, and diverting effort to secondary targets. (9: 260; 20:276)

Simplicity

In both the strategic and tactical sense, plans should be as simple and direct as the situation will allow. (20:128) The CBO in its simplest form was a "Capability Plan" AS OPPOSED TO AMPD 1-42 WHICH WERE? prescribing what should be done to achieve the objective with forces already committed to production. (9:251) While the Casablanca Directive did much to clarify confusion about the Objective, "it did not completely clear the air." (9:251) While initially simple with respect to phasing and targets, the plans were seriously out of phase with the intended timing with a resulting delay in attainment of the overall objective. (9:258)

YOU COVER ALL NINE POF WAC WHICH IS MINIMAL BUT ALL LACK NORTH!

## SECTION VI

### SUMMARY AND STRATEGIC/DOCTRINAL IMPLICATIONS

#### Summary

That the planners of the 1942-1945 Anglo-American Combined Bomber Offensive (CBO) during World War II selected a strategy of methodical bombing of Germany on an enormous scale is an uncontroverted fact of history. However, whether that strategy was selected merely to weaken Germany so as to ensure the success of OVERLORD, the great cross-channel attack in 1944, or to bring about the total destruction of the whole military, industrial and economic system, as well as the morale of the German people is, yet today the subject of some interpretation. The Casablanca Directive, stating among other things the objectives of the campaign, was subject to differing interpretations when it was written, and it remains so today. Thus, the reason the strategy was selected for this campaign and whether the CBO was successful depends upon one's view of the purpose stated in the Casablanca Directive.

**WHAT IS YOUR VIEW? THIS SOUNDS LIKE A POLITICIAN'S POSITION!**

**WHAT IS THE POINT OF THIS PAPER IS FOR YOU TO TAKE A STAND**

**AND DEFEND IT**

**WITH YOUR**

**RESEARCH**

Germany. Although the writings of both Generals Hansell and Spaatz reflect the view that Allied air power was decisive in the war in Western Europe, modern historians have reached divergent conclusions about not only the CBO, but also air power in general, and the overall impact on the war. Whatever disagreement there may be regarding the "decisiveness" of the

CBO, however, there seems to be unanimous agreement among all historical analysts that the CBO was certainly a significant factor in determining the outcome of the war in Europe. Further, *ONE IS THE QUESTION WHAT IS YOUR VIEW? YOU NEVER STATED IN INTRO!* if one views the objective of the CBO as making possible as invasion of the continent, it can be seen as nothing less than an overwhelming success.

Although there appears to be no real consensus as to the ultimate purpose of the CBO, *THIS IS SO WISNY-LASNY!* it is reasonable to conclude that the campaign strategy of sustained, massive day and night bombing of Germany by British and American heavy bombers was selected to weaken the German morale and war making ability to an extent to ensure the success of the cross-channel invasion. For the first time in the history of warfare, such a strategy was not only possible to implement, but its success could be realistically envisioned and, more importantly, attained, given relatively "strict" adherence to the principles of war as previously discussed.

#### Doctrinal Implications

Although the concept of air warfare was not entirely new, it had been around for at least 25 years. The doctrines for the application of the air arm of military power were still evolving. That evolution was shaped not only by changes in perceived growing threats to national interest, but also in large measure by increased technology. Aviation science and engineering were not so advanced in World War I to enable the production of long



large heavy aircraft, let alone convince, or even influence, top level military leadership to begin thinking in terms of strategic bombing.

By the time World War II was in full swing, however, all that had changed. The newly developed technology enabling the production of the British Lancaster and the American B-17 and B-24 and ultimately the long range P51 escort fighter, provided the opportunity for Anglo American political and military leaders to shift paradigms of military thinking to include strategic bombing as a viable strategy *OR NOT! (PER AMENDMENT TO DIRECTIVE)*

Although the RAF was established as an independent arm of the British military in World War II, American airmen within the Army Air Corps were still fighting for an autonomous air force. Relative or not as to the outcome of the war in Europe, at the very least, the CPO represented the realization of the dreams of American airmen who sought to vindicate their faith in an autonomous military air arm and independent air warfare based on bombing.

Although perhaps not the primary factor, surely the success of the CPO was a significant factor in the ultimate decision in 1947 to establish the United States Air Force as an independent service, coequal with the Army and Navy within what we now know as the Department of Defense.

9+21, 55 CITED

DON'T LIST

# BIBLIOGRAPHY

1. Bailey, Ronald H., *The Air War in Europe*, Alexandria, VA, Time-Life Books, 1979.
2. Bradford, Dr. James C. and Wayne Robinson, "World War II: Air Power in the European and Pacific Theaters," in *Air War College Nonresident Studies*, Vol. I, LSN 8, 8th Ed., pp. 214-215.
3. Crowl, Philip A., "The Strategist's Short Catechism: Six Questions Without Answers," *The Harmon Memorial Lectures in Military History*, No. 20, October 6, 1977, pp. 1-14, in *Air War College Nonresident Studies*, Vol. I, LSN 5, 8th Ed., pp. 23-29.
4. Futrell, Robert Frank, "AWPD-1: Air Planning for War," *Ideas, Concepts, Doctrine: Basic thinking in the United States Air Force, 1907-1960*, Vol. 1, Air University Press, Maxwell Air Force Base AL, 1989, pp. 108-114, 123, in *Air War College Nonresident Studies*, Vol. I, LSN 7, 8th Ed., pp. 209-213.
5. Futrell, Robert Frank, *Ideas, Concepts, Doctrine: A History of Basic Thinking in the United States Air Force 1907-1964*, Air University, Maxwell Air Force Base, AL, 1980.
6. Greenfield, Kent Robert, *American Strategy in World War II: A Reconsideration*, Mahabar, FL: Krieger Publishing Company, 1963.
7. Greenfield, Meg, "Childhood, Tempered by Anxiety," *The Washington Post*, July 26, 1995, pp. H4-H5.
8. Gigg, John, *1943: The Victory that Never Was*, New York, NY, Hill and Wang, 1980.
9. Hansell, Maj. Gen Haywood S., Jr., USAF, Ret, "The Plan for the Combined Bomber Offensive (CBO)," *The Air Plan That Defeated Hitler*, Chapter VIII, XI, XII, pp. 157-171, 251-275, 277-278, in *Air War College Nonresident Studies*, Vol. I, LSN 8, 8th Ed., pp. 251-273.
10. Hoyt, Martha Byrd, *A World in Flames: The History of World War II*, New York, NY, Atheneum, 1970.
11. Johnson, Haynes, "The New Face of the United States: What It Meant for America," *The Washington Post*, July 26, 1995, pp. H6-H7.



12. Macksey, Kenneth, *Military Errors of World War Two*, Dorset, Great Britain, Arms and Armour Press Limited, 1987.
13. Morrison, Wilbur H., *Fortress Without a Roof*, New York NY, St. Martin's Press, 1982.
14. Overly, R. J., *The Air War 1939-1945*, Chelsea, MI, Scarborough House, 1991.
15. Paret, Peter, ed., *The Makers of Modern Strategy from Machiavelli to the Nuclear Age*, Princeton, Princeton University Press, 1986.
16. Schaffer, Ronald, *Wings of Judgment; American Bombing in World War II*, New York, Oxford University Press, 1985.
17. Sherry, Michael S., *The Rise of American Air Power: The Creation of Armageddon*, New Haven, Yale University Press, 1987.
18. Smith, J.Y., "The Leaders of World War II: Men Who Made Over the World," *The Washington Post*, July 26, 1995, pp. H12-H13.
19. Spaatz, Gen Carl A, USAF, "Strategic Air Power: Fulfillment of a Concept," *Foreign Affairs*, Vol. 24, No. 3, April 1946, pp. 385-396, Council on Foreign Relations, 1946, in *Air War College Nonresident Studies*, Vol. I, LSN 8, 8th Ed., pp. 274-280.
20. Starry, Gen Donn A., USA, "The Principles of War," *Military Review*, Vol. 61, No. 9, September 1981, pp. 2-12, Published by the U.S. Army Command and General Staff College, Fort Leavenworth, KS, in *Air War College Nonresident Studies*, Vol. I, LSN 6, 8th Ed., pp. 123-129.
21. Weigley, Russell F., *The American Way of War; A History of United States Military Strategy and Policy*, Bloomington, Indiana University Press, 1977.

TAB 2

**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS  
COMMISSION**

INQUIRY CONCERNING A  
JUDGE NO. 02-487

Supreme Court Case No.: SC03-1171

**ANSWER**

Respondent, Judge Gregory P. Holder, by counsel and pursuant to Rule 9, FJQCR, responds to the Notice of Formal Charges served on him on or about July 16, 2003, and denies all of the charges against him. Judge Holder specifically denies that he violated Cannons 1, 2, or 5 of the Code of Judicial Conduct.

I certify that on August 7, 2003, the original Answer, together with a diskette containing the document in Word Perfect format, has been sent by FedEx and U. S. Mail for filing to the Clerk of the Court, Florida Supreme Court, 500 S. Duval Street, Tallahassee FL 32399-1927; and that duplicates of the original were served by telecopier and U.S. Mail to: JQC Special Counsel, Charles P. Pillans, III, Esq., Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and to JQC General Counsel, Thomas C. MacDonald, Jr., 1904 Holly Lane, Tampa, FL 33629.

*(Attorney Signature Appears on Following Page)*



David B. Weinstein, Esq.  
Florida Bar No.: 604410  
Virginia Zock Houser, Esq.  
Florida Bar No.: 0848859  
**BALES WEINSTEIN**  
P.O. Box 172179  
Tampa, Florida 33674-0179  
Telephone: (813) 224-9100  
Telecopier: (813) 224-9109

-and-

Gregory W. Kehoe, Esq.  
Florida Bar No.: 0486140  
**JAMES HOYER NEWCOMER**  
**& SMILJANICH, P.A.**  
4830 W. Kennedy Blvd., Ste. 550  
Tampa, Florida 33609

Attorneys for Defendant

TAB 3

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A  
JUDGE NO. 02-487

Supreme Court Case No.:  
SC03-1171

PRE-HEARING STATEMENT

Respondent, Judge Gregory P. Holder, by counsel, files this Pre-Hearing Statement<sup>1</sup>, pursuant to the Order of the JQC Hearing Panel Chairman.

BACKGROUND

The Florida Judicial Qualifications Commission filed a Notice of Investigation on April 1, 2003, based on its receipt of copies of documents anonymously submitted to a military reserve officer in 2002, which in turn were submitted to the United States Air Force on January 17, 2003. The documents alleged purported plagiarism by Judge Holder in a document submitted to the Air Force's Air War College in January 1998. Because the matter was under investigation by the Air Force, Judge Holder, a Colonel in the Air Force Reserve, sought a continuance until the Air Force had completed its investigation. Although from a review of other JQC proceedings it appeared that continuances were routinely granted, the JQC denied this request. Judge Holder appeared through counsel on May 9, 2003 and denied the charges.

---

<sup>1</sup> Discovery is ongoing. Respondent reserves the right to seek to add additional witnesses and witnesses.

Although the only documents available to the JQC were unauthenticated copies of copies, the JQC filed its Notice of Formal Charges served on him on July 16, 2003. The Charges included violations of Canons 1, 2, and 5. Judge Holder emphatically denied all of the charges against him. Judge Holder specifically denies that he violated Canons 1, 2, or 5 of the Code of Judicial Conduct.

After the Notice of Formal Charges was made public witnesses have come forward and have given sworn statements that the document attached to the Notice of Formal Charges as Exhibit "A" is not the document which Judge Holder gave these witnesses to review in early 1998. Witnesses also have come forth revealing that Judge Holder was acting as an undercover informant for the FBI investigation involving public corruption in Tampa and suggesting that the plagiarism allegation is retribution for this participation.

Neither the Air Force, nor Judge Holder, nor any person who was shown or read the AWC paper filed by Judge Holder in 1998 has retained a copy of that document – be it a hard copy or a computer copy. The Air Force officer who graded the AWC papers in the 1997-1998 academic year has given sworn testimony that he could not authenticate the purported Holder Paper (Exhibit A) as the paper submitted by Judge Holder and which the officer graded as "satisfactory." When the grader was asked to review the purported Holder Paper (Exhibit A) in 2003, he opined that it was a "marginal" paper and that he would



have graded it as such. He has testified that he has graded thousands of papers on the topic chosen by Judge Holder. Supporting the defense's contention that it is impossible to authenticate the documents at issue, the grader has identified the purported Holder Paper as well as several other created AWC papers as being graded by him when actually the exhibits were artificially generated.

WITNESSES to be called by Respondent include:

The Honorable James S. Moody, Jr.	character testimony
The Honorable Virginia Covington	character testimony
The Honorable Martha J. Cook	character testimony
The Honorable Emmett L. Battles	character testimony
The Honorable Williams P. Levens	character testimony
The Honorable Robert J. Simms	character testimony

John S. Vento, Esq., /Colonel, USAFR  
testimony regarding the Air War College paper which Judge Holder submitted to the Air Force and which Mr. Vento reviewed at that time.

James C. Russick, Esq./ Lt Col USAFR (Retired)  
testimony regarding the Air War College paper which Judge Holder submitted to the Air Force and which Mr. Vento reviewed at that time.

Col. Mary V. Perry, USAF  
testimony regarding the Air War College seminars which she attended with Judge Holder, the AWC paper she wrote and submitted, and persons she may or may not have given copies of her paper.

Kenneth E. Lawson, Esq., Assistant U.S. Attorney  
testimony regarding receipt of Judge Holder's AWC paper in January 1998 and review of same; review of Exhibit A and disavowal of same; disavowal of certain statements by Jeffrey Del Fuoco.

Jeffrey J. Del Fuoco, US Army (Reserve), Assistant U.S. Attorney  
testimony regarding the circumstances surrounding receipt of Exhibits A and B,  
the location of related materials, the disposition of the exhibits from his receipt  
until forwarding to Jeffrey S. Downing, a colleague; testimony regarding packet of  
documents "discovered" in October 2003 and forwarded to Air Force and JQC.

Unnamed representative from the U.S. Attorney's Office, Tampa  
testimony regarding Mr. Del Fuoco's reputation for truth and veracity.

Jeffrey S. Downing, Assistant U.S. Attorney  
testimony regarding the circumstances surrounding receipt of Exhibits A and B,  
the location of related materials, the disposition of the exhibits from his receipt  
until forwarding to the Air Force; testimony regarding packet of documents  
received in October 2003 and forwarded to Air Force and JQC.

Patricia T. Williams and/or Walter Williams  
testimony regarding printing and graphic reproduction techniques.

Detective James Bartoszak  
testimony regarding Judge Holder's being a participant in undercover corruption  
investigation.

Detective Dolvin "Bill" Todd  
testimony regarding Judge Holder's being a participant in undercover corruption  
investigation.

Michael S. Musial  
testimony regarding computer technology, record manipulation, computer backup  
and record preservation.

Sylvia B. Morgan  
testimony regarding witnessing Judge Holder researching and writing the AWC  
paper submitted to the AWC in January 1998.

Lorraine Nasco  
testimony regarding Judge Holder's drafting, her typing, his editing, and the  
finalization of the AWC paper submitted in January 1998.

Lt. Col. William Howe, USAF  
testimony regarding the AWC grading process and authentication of Exhibit A and related exhibits.

Col. John Powers, ASAF  
testimony regarding substantive Air Force matters.

Col. Howard Donaldson, ASAF  
testimony regarding substantive Air Force matters.

Lt. Col. Lauren Johnson-Naumann, USAF  
testimony regarding matters discovered in defense of Air Force investigation.

EXHIBITS which may be introduced by Respondent include:

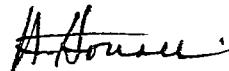
Exhibit 5 to Lt. Col. William O. Howe, Jr., deposition  
Exhibit 6 to Lt. Col. William O. Howe, Jr., deposition  
Memo to Charles Pillans from Judge Menendez (with attachments)

Deposition of Lieutenant Colonel Charles A. Howard  
Deposition of Lieutenant Colonel William O. Howe, Jr.  
Deposition of Colonel Gregory P. Holder  
Deposition of Lorraine Nasco  
Deposition of Mrs. Sylvia B. Morgan  
Deposition of Mr. Michael S. Musial  
Deposition of Detective James Bartoszak  
Deposition of Detective Dolvin "Bill" Todd

Affidavit of Ms. Lorraine Nasco  
Affidavit of Ms. Sylvia B. Morgan  
Affidavit of Colonel Mary V. Perry  
Affidavit of Lieutenant Colonel Dixie Morrow  
Affidavit of Lieutenant Colonel Charles A. Howard  
Affidavit of Colonel Glenn Spitzer  
Affidavit of Lieutenant Colonel Daryl Trawick  
Affidavit of Lieutenant Colonel Kirk Granier  
Affidavit of Lieutenant Colonel John Odom  
Affidavit of Ms. Sharon Vollrath  
Affidavit of Colonel (Retired) Howard Donaldson  
Affidavit of James Cusack, Esq.

Affidavit of Clifton Curry, Esq.  
Affiadvit of Detective James Bartoszak  
Affidavit of Detective Dolvin "Bill" Todd  
Affidavit of Kenneth E. Lawson, Esq.  
Affidavit of John S. Vento, Esq.  
Affidavit of James C. Russick, Esq.  
Affidavit of Kevin C. Ambler, Major, USAFR  
Affidavit of John F. Rudy, II, Esq.  
Affidavit of Patricia Anderson, Esq.

I hereby certify that on December 11, 2003, Respondent's original Pre-Hearing Statement, together with a diskette containing the document in Word Perfect format, has been sent by overnight delivery for filing to the Clerk of the Court, Florida Supreme Court, 500 S. Duval Street, Tallahassee FL 32399-1927; and that duplicates of the original were served by telecopier and U.S. Mail to: JQC Special Counsel, Charles P. Pillans, III, Esq., Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 333202; and to JQC General Counsel, Thomas C. MacDonald, Jr., 1904 Holly Lane, Tampa, FL 33629.



---

David B. Weinstein, Esq.  
Florida Bar No.: 604410  
Virginia Zock Houser, Esq.  
Florida Bar No.: 0848859  
**BALES WEINSTEIN**  
P.O. Box 172179  
Tampa, Florida 33674-0179  
Telephone: (813) 224-9100  
Telecopier: (813) 224-9109

-and-

Gregory W. Kehoe, Esq.  
Florida Bar No.: 0486140  
**JAMES HOYER NEWCOMER &  
SMILJANICH, P.A.**  
4830 W. Kennedy Blvd., Suite 550  
Tampa, Florida 33609

TAB 4

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A  
JUDGE NO. 02-487

Supreme Court Case No.:  
SC03-1171

**AMENDED THIRD PRE-HEARING STATEMENT**

Judge Gregory P. Holder files this Pre-Hearing Statement,<sup>1</sup> pursuant to the Order of the Judicial Qualifications Commission ("JQC") Hearing Panel Chairman dated June 18, 2004.

**I. BACKGROUND**

The JQC filed a Notice of Investigation on April 1, 2003, based on its receipt of copies of documents anonymously submitted to a military reserve officer, Jeffrey John Del Fuoco, in 2002, which he then submitted to the United States Air Force on January 17, 2003. The documents included a paper purportedly plagiarized by Judge Holder submitted to the Air Force's Air War College ("AWC") in January 1998.

Based on the unauthenticated copies of documents, the JQC filed its Notice of Formal Charges on July 16, 2003. The Charges included violations of Canons 1, 2, and 5 of the Code of Judicial Conduct. Judge Holder emphatically denied all

---

<sup>1</sup> Discovery is ongoing. Respondent reserves the right to supplement this Statement following completion of all discovery. Respondent also reserves the right to file any necessary Motions regarding constitutional and dispositive issues following the completion of discovery.

of the charges against him. Judge Holder specifically denies that he violated Cannons 1, 2, or 5 of the Code of Judicial Conduct.

After months of discovery, the documents remain unauthenticated. Indeed, the Air Force officer who graded the AWC papers in the 1997-1998 academic year, Lt. Col. William O. Howe, has given sworn testimony that he could not authenticate the purported Holder Paper (Exhibit A to JQC Notice of Formal Charges "Exhibit A") as the paper submitted by Judge Holder which received a "satisfactory" grade. Col. Howe has graded thousands of papers on the topic chosen by Judge Holder, and, admitting that it is impossible to authenticate the documents at issue in deposition, he has identified the purported Holder Paper as well as several other AWC papers as being graded by him when actually the exhibits were artificially generated.

Moreover, witnesses have come forward and have given sworn statements that the document attached to the Notice of Formal Charges as Exhibit "A" is not the document that Judge Holder gave these witnesses to review in early 1998. The Air Force, Judge Holder, and each person who was shown or read the actual AWC paper submitted by Judge Holder to the Air Force in 1998 did not retain a copy of that document – be it a hard copy or a computer copy.



## II. WITNESSES

### FACT WITNESSES

Witnesses who may be called by Respondent, subject to Respondent's Motions In Limine, include:

Lorraine Nasco – Ms. Nasco will testify regarding access to chambers and computers, Judge Holder's drafting and the finalization of the AWC paper submitted by Judge Holder in January 1998.

Sylvia B. Morgan – Ms. Morgan will testify regarding Judge Holder's AWC paper as well as Judge Bananno's unauthorized entry into in Judge Holder's private chambers.

John S. Vento, Esq., Colonel, United States Air Force Reserve ("USAFR") – Col. Vento will testify regarding the AWC paper that Judge Holder submitted to the Air Force and that Mr. Vento reviewed at that time.

James C. Russick, Esq., Lt Col USAFR (Retired) – Lt. Col Russick will testify regarding participation in the AWC seminar with Judge Holder and Col. Perry; Judge Holder's research for the AWC paper; and the AWC paper that Judge Holder submitted to the Air Force and that Mr. Russick reviewed at that time.

Kenneth E. Lawson, Esq., Assistant U.S. Attorney – Mr. Lawson will testify regarding Judge Holder's AWC paper, the Hoard Paper, and disavowal of certain statements by Jeffrey Del Fuoco.

Dennis M. Alvarez, Esq., former Chief Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Alvarez will testify regarding courthouse security, complaints of misconduct and corruption by judges and court personnel in the Thirteenth Judicial District of Florida (Hillsborough County), knowledge of investigations into those allegations, Judge Holder's relationship with other judges and Judge Alvarez' relationship with Judge Holder, and Judge Holder's work habits and relationship to the media.

Robert H. Bonnanno, Esq., former Circuit Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Bonnanno will testify regarding his and other judges' relationships with Judge Holder, the circumstances regarding his

unauthorized presence in Judge Holder's private chambers, and the courthouse's information systems.

Jeffrey J. Del Fuoco, US Army (Reserve), Assistant U.S. Attorney – Mr. Del Fuoco will testify regarding the circumstances surrounding his receipt of Exhibits A and B, the location of related materials, the disposition of the exhibits from his receipt until forwarding to Jeffrey S. Downing, testimony regarding packet of documents “discovered” in October 2003 and forwarded to Air Force and the JQC, and his employment status at time of these events.

Jeffrey S. Downing, Assistant U.S. Attorney – Mr. Downing will testify regarding the circumstances surrounding receipt of Exhibits A and B, the location of related materials, the disposition of the exhibits from his receipt until forwarding to the Air Force, testimony regarding packet of documents received in October 2003 and forwarded to Air Force and JQC.<sup>2</sup>

Col. Mary V. Perry, United States Air Force (“USAF”) – Col. Perry will testify regarding the Air War College seminars that she attended with Judge Holder, the AWC paper she wrote and submitted, and persons to whom she may or may not have given copies of her paper.

Col. Dixie Morrow, USAF – Col Morrow will testify regarding the Air War College seminars that she attended, conversations with Judge Holder regarding writing the AWC paper, and practices of AWC students.

Lt. Col. John Odom, USAF – Lt. Col. Odom will testify regarding substantive Air Force matters, including, Air Force Promotion Board proceedings, and Judge Holder's military duties.

Col. John Powers, USAF – Col. Powers will testify regarding his experience as Judge Holder's supervisor, and substantive Air Force matters.

Lt. Col. William O. Howe, Jr., USAF – Lt. Col. Howe will testify regarding the AWC grading process and inability to authenticate Exhibit A and related exhibits and confirmation of certain anomalies in Exhibit A (by deposition, November 20, 2003).

---

<sup>2</sup> Subject to Judge Holder's Motion to Exclude and Objections to the Special Counsel's Pre-Trial Statement.

Lt. Col. Charles A. Howard, USAF – Lt. Col. Howard will testify to confirm the attendance of Judge Holder, James C. Russick, and Mary V. Perry in the AWC seminar at MacDill AFB in 1997-98, the AWC grading process, the original of Holder's AWC paper (Exhibit A to the Notice of Formal Changes) the grader's correspondence to Judge Holder, and authentication of Exhibit A.

Maj. Gen. Frank Ragano, US Army – Maj. Gen. Ragano will testify regarding AWC, warnings regarding plagiarism given to AWC students, means to detect plagiarism, and Air Force steps and mechanisms to detect plagiarism.

Detective James Bartoszak, Tampa Police Department ("TPD") - Det. Bartoszak will testify regarding Judge Holder's participation in undercover corruption investigation.

Detective Dolvin "Bill" Todd, TPD – Det. Todd will testify regarding Judge Holder's participation in undercover corruption investigation.

Special Agent Kelly Thomas, Federal Bureau of Investigation - Special Agent Thomas will testify regarding Judge Holder's participation in undercover corruption investigation.

Col. E. David Hoard – Col. Hoard will testify regarding AWC course and paper.

Judge Gregory P. Holder – will testify regarding the allegations in this proceeding and the background and setting of those allegations.

Scott F. Peterka, Florida Department of Law Enforcement – Mr. Peterka will testify regarding the courthouse investigations.

John T. Crow, Ph.D. – Mr. Crow will testify regarding applied linguistics, applied grammar, stylistic elements of writing composition and composition analysis of texts.

Bruce Dekraker – Mr. Dekraker will testify regarding analysis of authenticity of documents, including the purported Holder paper.

Matt Kloskowski – Mr. Kloskowski will testify regarding graphic reproduction and Adobe Photoshop.

Patricia T. Williams and/or Walter Williams – Mr. and/or Mrs. Williams will testify regarding printing and graphic reproduction techniques.

Michael S. Musial – Mr. Musial will testify regarding computer technology, computer backup systems, and record preservation.

David Greetham – Mr. Greetham will testify regarding backup tapes, computers, and computer files.

Bradley D. Lutz – Mr. Lutz will testify regarding Hillsborough County Courthouse information systems.

Mildred R. Becki Stafford – Ms. Stafford will testify regarding Hillsborough County Courthouse information systems.

William J. Walls – Mr. Walls will testify regarding AWC papers and information and documents received from Jeffrey Del Fuoco.

#### POSSIBLE REBUTTAL WITNESSES

Lt. Col. Lauren Johnson-Naumann, USAF – Lt. Col. Johnson-Naumann is a possible rebuttal witness.

#### CHARACTER WITNESSES (Subject to Witness Availability)

Kenneth Ambler, Esq.  
Honorable Lamar Battles  
Howard L. Donaldson, Colonel (USAF Ret.)  
Honorable William Levens  
Honorable James S. Moody, Jr.  
Timon V. Sullivan, Esq.  
Honorable Martha Cook  
Robert Williams, Esq.  
Clifton C. Curry

EXHIBITS:<sup>3</sup>

1. Deposition of Lieutenant Colonel Charles A. Howard and Exhibits, (November 19, 2003)
2. Affidavit of Lieutenant Colonel Charles A. Howard (March 11, 2003)
3. Affidavit of Lieutenant Colonel Charles A. Howard (June 9, 2003)
4. Deposition of Lieutenant Colonel William O. Howe, Jr. and Exhibits (November 20, 2003)
5. Affidavit of Lieutenant Colonel William O. Howe, Jr. (March 10, 2003)
6. Affidavit of Lieutenant Colonel William O. Howe, Jr. (August 20, 2003)
7. Deposition of Lorraine Nasco and Exhibits (November 5, 2003)
8. Affidavit of Lorraine Nasco (April 4, 2003)
9. Affidavit of Lorraine Nasco (June 27, 2003)
10. Affidavit of Lorraine Nasco, (August 31, 2003)
11. E-mail of Lorraine Nasco, (April 16, 2003)
12. Deposition of James W. Bartoszak and Exhibits (December 10, 2003)
13. Affidavit of James W. Bartoszak (October 27, 2003)
14. Deposition of Sylvia B. Morgan and Exhibits (December 10, 2003)
15. Affidavit of Sylvia B. Morgan (June 26, 2003)
16. Deposition of Michael S. Musial and Exhibits (December 10, 2003)

---

<sup>3</sup> List subject to rulings upon all motions to exclude. By listing item as exhibit, Judge Holder does not waive any objections to the admissibility thereof.

17. Affidavit of Michael S. Musial (September 2, 2003)
18. Graded Hoard Paper and accompanying Letter
19. Deposition of Dolvin W. Todd, Jr. and Exhibits (December 10, 2003)
20. Affidavit of Dolvin W. Todd, Jr. (August 13, 2003)
21. Deposition of Walter Williams and Exhibits (January 8, 2004)
22. Deposition of Patricia Williams and Exhibits (January 8, 2004)
23. Declaration of Bradley D. Lutz
24. Declaration of Becki Stafford (August 16, 2004)
25. Unsealed Grand Jury Testimony of former Chief Judge F. Dennis Alvarez (August 25, 2000)
26. Unsealed Grand Jury Testimony of former Circuit Judge Robert H. Bonnano (November 15, 2000)
27. Unsealed Grand Jury Testimony of Scott F. Peterka (October 3, 2000)
28. Affidavit of Howard L. Donaldson (June 3, 2003)
29. Affidavit of E. David Hoard (March 6, 2003)
30. Affidavit of Kenneth E. Lawson (November 14, 2003)
31. Affidavit of Lt. Col. Dixie A. Morrow (June 4, 2003)
32. Affidavit of Col. Mary V. Perry (May 28, 2003)
33. Affidavit of Col. Mary V. Perry (November 12, 2003)
34. Affidavit of Lt. Col. James C. Russick (August 5, 2003)
35. Affidavit of John Sebastian Vento (August 5, 2003)

36. Affidavit of James J. Cusak, Esq.
37. Affidavit of Lieutenant Colonel John Odom
38. Affidavit of Colonel Glenn Spitzer (June 16, 2003)
39. Letter of Colonel Glenn Spitzer (April 19, 2003)
40. Affidavit of Lieutenant Colonel Daryl Trawick
41. Notarized letter of Lieutenant Colonel Kirk Granier (June 6, 2003)
42. Affidavit of Clifton Curry, Esq.
43. Affidavit of Patricia Fields Anderson, Esq. (July 22, 2004)
44. Affidavit of Patricia Fields Anderson, Esq. (August 17, 2003)
45. Affidavit of Sharon Morgan Vollrath, Esq.
46. Affidavit of Jerry Hill
47. Affidavit of M. Blair Payne
48. Affidavit of Major Christine R. Bosau
49. Letter of Major Kenneth C. Ambler to Gen. Thomas J. Fiscus
50. Test Results and Grades from Holder's Air Force Continuing Education Classes: Squadron Officer School, Air Command and Staff College, and Air War College
51. Adobe Photoshop Manual
52. Air Force Awards Bestowed on Gregory P. Holder
53. Attendance Records of Air Force Continuing Education Classes
54. Course Materials from the Air War College

55. Gregory P. Holder's Air Force Active Duty Records
56. Gregory P. Holder's Application for Federal Judgeship
57. Copy of Purported Holder Paper Received from Jeffrey Del Fuoco (Exhibit A to JQC Notice of Formal Changes)
58. Facsimile Transmission of E. David Hoard's AWC Paper to Judge Holder, which was received by Jeffrey Del Fuoco (Exhibit B to JQC Notice of Formal Charges)
59. Commander Directed Investigation, Gregory P. Holder, 16 March 2003 Prepared by Colonel David M. Leta (CDI)
60. Supplemental Report to Commander Directed Investigation, Colonel David M. Leta, 19 April 2003
61. Letter of Reprimand, Colonel Rita Russell to Colonel Gregory P. Holder, 18 April 2003 (with attachments)
62. Document Retrieved from Courthouse Backup Files of Lorraine Nasco, last accessed December 5, 1997 at 3:46 PM
63. Lorraine Nasco's Attendance Records at the Courthouse
64. Computer files on Courthouse computers and back up tapes, and printouts related thereto
65. Judicial Automated Data System Meeting Recap (November 16, 2001)
66. AWC Paper submitted by Lieutenant Colonel Mary V. Perry, April 1998
67. Documents found by Jeffrey Del Fuoco in October 2003, Bates-stamped KELjd 1-171
68. Purported Holder Paper as contained in Bates-stamped KELjd1-171
69. Memo from Jeffrey Del Fuoco to Col. Thomas Jaster, November 2, 2003, regarding origin of KELjd 1-171



- 70. AWC Paper by Mary V. Perry as contained in KELjd1-171.
- 71. Deposition of Judge Gregory P. Holder (November 5, 2003)
- 72. Deposition of Judge Gregory P. Holder (April 29, 2004)
- 73. Affidavit of Judge Gregory P. Holder (June 25, 2003)
- 74. Affidavit of John F. Rudy, II
- 75. FDLE Investigation Report Re Unauthorized Presence In Judge Holder's Chambers
- 76. Exemplars of Judge Holder's Writing.

Dated: September 1, 2004

Respectfully Submitted,



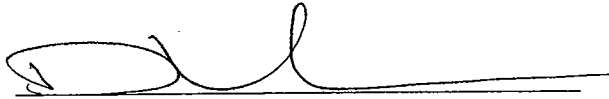
David B. Weinstein, Esq.  
Florida Bar Number 604410  
**Bales Weinstein**  
Post Office Box 172179  
Tampa, Florida 33672-0179  
Telephone No.: (813) 224-9100  
Telecopier No.: (813) 224-9109

-and-

Juan P. Morillo  
Florida Bar No.: 0135933  
**Sidley Austin Brown & Wood LLP**  
1501 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 736-8000  
Telecopier: (202) 736-8711  
Counsel for Judge Gregory P. Holder

### **CERTIFICATE OF SERVICE**

I certify that on September 1, 2004, a copy of the foregoing has been served by telecopier and by U.S. Mail to: Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Cox, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.

  
\_\_\_\_\_  
Attorney

TAB 5

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A  
JUDGE NO. 02-487

Supreme Court Case No.:  
SC03-1171

**FOURTH AMENDED PRE-HEARING STATEMENT**

Judge Gregory P. Holder files this Pre-Hearing Statement,<sup>1</sup> pursuant to the Order of the Judicial Qualifications Commission ("JQC") Hearing Panel Chairman dated February 16, 2005.

**I. BACKGROUND**

On July 16, 2003, the Florida Judicial Qualifications Commission (the "JQC") filed a Notice of Formal Charges (the "Notice") to determine whether Respondent plagiarized an Air War College ("AWC") paper submitted in 1998 ("purported Holder paper"). The JQC's charges are based upon unauthenticated copies of the purported Holder paper.

The Charges included violations of Canons 1, 2, and 5 of the Code of Judicial Conduct. Judge Holder has emphatically denied all of the charges against him. Judge Holder specifically denies that he violated Canons 1, 2, or 5 of the Code of Judicial Conduct.

---

<sup>1</sup> Discovery remains ongoing and Respondent reserves the right to amend this Statement and the right to file any necessary motions following the submission of this Statement.

After many months of discovery, the documents remain unauthenticated. Indeed, the Air Force officer who graded the AWC papers in the 1997-1998 academic year, Lt Col William O. Howe, has given sworn testimony that he could not authenticate the purported Holder paper (Exhibit A to JQC Notice of Formal Charges "Exhibit A") as the paper submitted by Judge Holder which received a "satisfactory" grade. Col Howe has graded thousands of papers on the topic chosen by Judge Holder, and, admitting that it is impossible to authenticate the documents at issue in deposition, he has identified the purported Holder Paper as well as several other AWC papers as being graded by him when actually the exhibits were artificially generated.

Moreover, witnesses have come forward and have given sworn statements or depositions that the document attached to the Notice of Formal Charges as Exhibit "A" is not the document that Judge Holder gave these witnesses to review in early 1998. Judge Holder and each person who was shown or read the actual AWC paper submitted by Judge Holder to the Air Force in 1998 will testify in a manner flatly inconsistent with the purported Holder paper being authentic.

## II. WITNESSES

### FACT WITNESSES

Witnesses who may be called by Respondent, subject to Respondent's Motions In Limine, include:

Lorraine Nasco – Ms. Nasco will testify regarding Judge Holder's chambers, work habits, writing, and computers; Judge Holder's research, drafting, finalization, submission, and distribution of the AWC paper submitted by Judge Holder in January 1998; and chambers' practices and procedures.

Sylvia B. Morgan – Ms. Morgan will testify regarding Judge Holder's AWC paper (including its preparation and distribution), Judge Bonanno's unauthorized entry into Judge Holder's private chambers, and chambers' practices and procedures.

John S. Vento, Esq., Col, United States Air Force Reserve ("USAFR") – Col Vento will testify regarding the AWC paper that Judge Holder actually prepared and submitted to the Air Force.

James C. Russick, Esq., Lt Col USAFR (Retired) – Lt Col Russick will testify regarding participation in the AWC seminar with Judge Holder and Col Perry; Judge Holder's research for the AWC paper; and the AWC paper that Judge Holder actually prepared and submitted to the Air Force.

Kenneth E. Lawson, Esq., Assistant U.S. Attorney – Mr. Lawson will testify regarding Judge Holder's AWC paper, the Hoard Paper, receipt of Air War College materials, and Judge Holder's reputation for truthfulness.

Dennis M. Alvarez, Esq., former Chief Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Alvarez will testify regarding courthouse security, complaints of misconduct and corruption by judges and court personnel in the Thirteenth Judicial District of Florida (Hillsborough County), knowledge of investigations into those allegations, Judge Holder's relationship with other judges, including Judge Alvarez, as well as Judge Holder's work habits and relationship with the media.

Robert H. Bonanno, Esq., former Circuit Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Bonanno will testify regarding his and other judges' relationships with Judge Holder, the circumstances regarding his unauthorized presence in Judge Holder's private chambers, and the courthouse's information systems.

Jeffrey J. Del Fuoco, US Army (Reserve), Assistant U.S. Attorney – Mr. Del Fuoco will testify regarding the circumstances surrounding his alleged receipt of JQC Exhibits A and B, his subsequent conduct, the location of related materials, the chain of custody and other events relating to the Exhibits and related materials, testimony regarding an envelope of documents "discovered" in October 2003, and forwarded to the Air Force and the JQC,<sup>2</sup> forensic analysis of the purported "evidence," Mr. Del Fuoco's positions at the U. S. Attorney's Office, and other complaints and evidence he has offered against other members of the legal community.

Jeffrey S. Downing, Assistant U.S. Attorney – Mr. Downing will testify regarding the circumstances surrounding receipt of Exhibits A and B, the location of related materials, the chain of custody and handling of these documents, the envelope of documents received from Del Fuoco in October 2003 and forwarded to the Air Force and JQC,<sup>3</sup> forensic analysis of the purported "evidence," Mr. Del Fuoco's positions within the U. S. Attorney's Office, and Mr. Del Fuoco's character and reputation for truthfulness.

Col Mary V. Perry, United States Air Force ("USAF") – Col Perry will testify regarding the Air War College seminars that she attended with Judge Holder, the AWC paper she wrote and submitted, and the distribution of her paper.

Col Dixie Morrow, USAF – Col Morrow will testify regarding the Air War College seminars that she attended, conversations with Judge Holder regarding writing the AWC paper, and practices of AWC students.

Lt Col John Odom, USAF – Lt Col Odom will testify regarding substantive Air Force matters, including, Air Force Promotion Board proceedings, and Judge Holder's military duties.

---

<sup>2</sup> Subject to Judge Holder's Motion to Exclude and Objections to the Special Counsel's Pre-Trial Statement.

<sup>3</sup> Same as #2 above.

Col John Powers, USAF – Col Powers will testify regarding his experience as Judge Holder's supervisor and as to substantive Air Force matters.

Lt Col William O. Howe, Jr., USAF – Lt Col Howe will testify regarding the AWC grading process, his inability to authenticate Exhibit A and related exhibits, and confirmation of certain anomalies in Exhibit A (by deposition, November 20, 2003).

Lt Col Charles A. Howard, USAF – Lt Col Howard will testify to confirm the attendance of Judge Holder, James C. Russick, and Mary V. Perry in the AWC seminar at MacDill AFB in 1997-98, the AWC grading process, Holder's AWC paper, and the grader's correspondence to Judge Holder.

Maj Gen Frank Ragano, US Army – Maj Gen Ragano will testify regarding AWC, warnings regarding plagiarism given to AWC students, means to detect plagiarism, and Air Force steps and mechanisms to detect plagiarism.

Detective James Bartoszak, Tampa Police Department ("TPD") – Det. Bartoszak will testify regarding Judge Holder's participation in undercover corruption investigations and attendant concerns about Judge Holder's safety.

Detective Dolvin "Bill" Todd, TPD – Det. Todd will testify regarding Judge Holder's participation in undercover corruption investigations and attendant concerns about Judge Holder's safety.

Special Agent Kelly Thomas, Federal Bureau of Investigation – Special Agent Thomas will testify regarding Judge Holder's participation in undercover corruption investigations.

Col E. David Hoard – Col Hoard will testify regarding the AWC course and his paper.

Judge Gregory P. Holder – Judge Holder will testify regarding the allegations in this proceeding and the background of those allegations, his chambers, his career, and related matters.

Scott F. Peterka, Florida Department of Law Enforcement – Mr. Peterka will testify regarding corruption investigations and related matters.



John T. Crow, Ph.D. – Mr. Crow will testify regarding applied linguistics, applied grammar, stylistic elements of writing composition, and his analysis of the purported Holder paper.

Bruce Dekraker – Mr. Dekraker will testify regarding his analysis of the purported Holder paper and Linda James' analysis of the same.

Matt Kloskowski – Mr. Kloskowski will testify regarding graphic reproduction and Adobe Photoshop.

Patricia T. Williams and/or Walter Williams – Mr. and/or Mrs. Williams will testify regarding printing and graphic reproduction techniques.

Michael S. Musial – Mr. Musial will testify regarding computer technology, computer backup systems, record preservation, and files found on courthouse information systems.

David Greetham – Mr. Greetham will testify regarding backup tapes, computers, and computer files, including computer files found on the courthouse information systems.

Bradley D. Lutz – Mr. Lutz is expected to testify regarding Hillsborough County Courthouse information systems.

Mildred R. Becki Stafford – Ms. Stafford is expected to testify regarding Hillsborough County Courthouse information systems.

William J. Walls – Mr. Walls will testify regarding AWC papers and information and documents he received from Jeffrey Del Fuoco.

Sheriff Charles B. Wells – Sheriff Wells will testify regarding allegations made against him by Jeffrey Del Fuoco, litigation including the Sheriff and Mr. Del Fuoco, and Mr. Del Fuoco's reputation for truthfulness.

Paul I. Perez – Mr. Perez will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

Robert Mosakowski – Mr. Mosakowski will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

James Klindt – Mr. Klindt will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

Robert O'Neill – Mr. O'Neill will testify regarding Mr. Del Fuoco's allegations against members of the US Attorney's Office, his positions and status at the office, as well as Mr. Del Fuoco's reputation for truthfulness.

#### POSSIBLE REBUTTAL WITNESSES

Lt Col Lauren Johnson-Naumann, USAF – Lt Col Johnson-Naumann is a possible rebuttal witness.<sup>4</sup>

#### CHARACTER WITNESSES (Subject to Witness Availability)

Kenneth Ambler, Esq.  
Honorable Lamar Battles  
Honorable William Levens  
Honorable James S. Moody, Jr.  
Timon V. Sullivan, Esq.  
Honorable Martha Cook  
Clifton C. Curry  
Jim Cusack, Esq.  
Richard Mandt  
Gen Chip Diehl (Ret.)

---

<sup>4</sup> In addition, Respondent reserves the right to call any fact or character witness as a rebuttal witness.

EXHIBITS:<sup>4</sup>

No.	Date	Description
1	November 19, 2003	Deposition of Lieutenant Colonel Charles A. Howard and Exhibits <sup>5</sup>
2	March 11, 2003	Affidavit of Lieutenant Colonel Charles A. Howard
3	June 9, 2003	Affidavit of Lieutenant Colonel Charles A. Howard
4	November 20, 2003	Deposition of Lieutenant Colonel William O. Howe, Jr. and Exhibits
5	March 10, 2003	Affidavit of Lieutenant Colonel William O. Howe, Jr.
6	August 20, 2003	Affidavit of Lieutenant Colonel William O. Howe, Jr.
7	November 5, 2003	Deposition of Lorraine Nasco and Exhibits
8	April 3, 2003	Affidavit of Lorraine Nasco
9	June 27, 2003	Affidavit of Lorraine Nasco
10	August 31, 2003	Affidavit of Lorraine Nasco,
11	April 16, 2003	E-mail of Lorraine Nasco,
12	December 10, 2003	Deposition of James W. Bartoszak and Exhibits

<sup>4</sup> List is subject to rulings upon all motions to exclude. By listing item as exhibit, Judge Holder does not waive any objections to the admissibility thereof. In addition, Respondent understands the obligation to notice and exchange "Exhibits" to apply only to evidentiary exhibits, and not to demonstrative or illustrative aids.

<sup>5</sup> Throughout this exhibit list, references to "Exhibits" include both the original documents that are referenced in the deposition and copies of those documents that may be attached to the deposition transcript.

<b>No.</b>	<b>Date</b>	<b>Description</b>
13	October 27, 2003	Affidavit of James W. Bartoszak
14	December 10, 2003	Deposition of Sylvia B. Morgan and Exhibits
15	June 26, 2003	Affidavit of Sylvia B. Morgan
16	December 10, 2003	Deposition of Michael S. Musial and Exhibits
17	September 2, 2003	Affidavit of Michael S. Musial
18		Graded Hoard Paper and accompanying Letter
19	December 10, 2003	Deposition of Dolvin W. Todd, Jr. and Exhibits
20	August 18, 2003	Affidavit of Dolvin W. Todd, Jr.
21	January 8, 2004	Deposition of Walter Williams and Exhibits
22	January 8, 2004	Deposition of Patricia Williams and Exhibits
23	August 16, 2004	Declaration of Bradley D. Lutz
24	October 9, 2003	Statement of Bradley D. Lutz
25	August 16, 2004	Declaration of Becki Stafford
26	October 9, 2003	Statement of Becki Stafford
27	October 25, 2000	Unsealed Grand Jury Testimony of former Chief Judge F. Dennis Alvarez
28	November 15, 2000	Unsealed Grand Jury Testimony of former Circuit Judge Robert H. Bonanno
29	October 3, 2000	Unsealed Grand Jury Testimony of Scott F. Peterka

<b>No.</b>	<b>Date</b>	<b>Description</b>
30	June 3, 2003	Affidavit of Howard L. Donaldson
31	March 6, 2003	Affidavit of E. David Hoard
32	November 14, 2003	Affidavit of Kenneth E. Lawson
33	February 11, 2005	Deposition of Kenneth E. Lawson
34	June 4, 2003	Affidavit of Lt Col Dixie A. Morrow
35	May 28, 2003	Affidavit of Col Mary V. Perry
36	November 12, 2003	Affidavit of Col Mary V. Perry
37	August 5, 2003	Affidavit of Lt Col James C. Russick
38	August 5, 2003	Affidavit of John Sebastian Vento, Esq.
39	May 28, 2005	Deposition of John Sebastian Vento with Exhibits
40	June 20, 2003	Affidavit of James J. Cusak, Esq.
41	June 4, 2003	Affidavit of Lieutenant Colonel John Odom
42	June 16, 2003	Affidavit of Colonel Glenn Spitzer
43	April 19, 2003	Memorandum of Colonel Glenn Spitzer
44	June 4, 2003	Affidavit of Lieutenant Colonel Daryl Trawick
45	June 6, 2003	Notarized letter of Lieutenant Colonel Kirk Granier
46	June 5, 2003	Affidavit of Clifton Curry, Esq.
47	June 26, 2003	Affidavit of Clifton Curry, Esq.

No.	Date	Description
48	July 22, 2004	Affidavit of Patricia Fields Anderson, Esq.
49	August 17, 2003	Affidavit of Patricia Fields Anderson, Esq.
50	June 6, 2003	Affidavit of Sharon Morgan Vollrath, Esq.
51	July 14, 2004	Affidavit of Jerry Hill
52	August 25, 2003	Affidavit of M. Blair Payne
53	undated	Statement of Major Christine R. Bosau
54	August 27, 2003	Letter of Major Kenneth C. Ambler to Gen Thomas J. Fiscus
55		Test Results and Grades from Judge Holder's Air Force Continuing Education Classes: Squadron Officer School, Air Command and Staff College, and Air War College
56		Adobe Photoshop Program and Manual 5.0
57		Air Force Awards Bestowed on Gregory P. Holder
58		Attendance Records of Air Force Continuing Education Classes
59		Course Materials from the Air War College
60		Gregory P. Holder's Air Force Active Duty Records
61		Gregory P. Holder's Application for Federal Judgeship
62		Copy of Purported Holder Paper Received from Jeffrey Del Fuoco attached as Exhibit A to JQC's Notice of Formal Charges

No.	Date	Description
63		Facsimile Transmission of E. David Hoard's AWC Paper to Judge Holder (Exhibit B to JQC Notice of Formal Charges)
64		Commander Directed Investigation, Gregory P. Holder, 16 March 2003 Prepared by Colonel David M. Leta Commander Directed Investigation
65	April 19, 2003	Supplemental Report to Commander Directed Investigation, from Colonel David M. Leta
66	April 18, 2003	Letter of Reprimand, Colonel K.C. McClain to Colonel Gregory P. Holder, with attachments
67	December 5, 1997	Document Retrieved from Courthouse Backup Files of Lorraine Nasco, last accessed December 5, 1997 at 3:46 PM
68		Lorraine Nasco's Attendance Records at the Courthouse
69		Computer files on Courthouse computers and back up tapes, and printouts related thereto
70	November 16, 2001	Judicial Automated Data System Meeting Recap
71	April 17, 1998	AWC Paper submitted by Lieutenant Colonel Mary V. Perry
72	October 2003	Documents found by Jeffrey Del Fuoco in October 2003, Bates-stamped KELjd 1-171
73	October 2003	Purported Holder Paper as contained in Bates-stamped KELjd1-171; (KELjd 112-137)
74	November 2, 2003	Memo from Jeffrey Del Fuoco to Col Thomas Jaster, regarding origin of KELjd 1-171
75		AWC Paper by Mary V. Perry as contained in KELjd1-171

No.	Date	Description
76	November 5, 2003	Deposition of Judge Gregory P. Holder and Exhibits
77	April 29, 2004	Deposition of Judge Gregory P. Holder and Exhibits
78	June 25, 2003	Affidavit of Judge Gregory P. Holder
79	August 18, 2003	Affidavit of John F. Rudy, II
80		FDLE Investigation Report Re Unauthorized Presence In Judge Holder's Chambers
81		Exemplars of Judge Holder's Writing
82	August 29, 2003	Memorandum re: Apparent Ethical and Possible Criminal Violations Committed by AUSAs Robert E. O'Neil and Robert Mosakowski from Jeffrey Del Fuoco to Office of Professional Responsibility US Dept of Justice
83	December 2003	Complaint of Possible Prohibited Personnel Practice or other Prohibited Activity from Jeffrey Del Fuoco, re: Paul I. Perez; James Klindt; and Robert E. O'Neil
84	September 23, 2004	US District Court Motion for Sanctions Against Jeffrey Del Fuoco and Plaintiff's Attorney Craig Huffman for Bad Faith and Extortionate Conduct and Incorporated Memorandum of Law Re Jeffrey Del Fuoco v. Charles B Wells, et al
85	July 30, 2004	Second Amended Complaint Re Jeffrey Del Fuoco v. Charles B. Wells, Sheriff of Manatee County, Larry Bahnson, employee of Sheriff, and Deputy Barry Coleman, employee of Sheriff US District Court Middle District of Florida



No.	Date	Description
86	11/29/2004	Exhibit A State of Florida Elections Commission Confidential Complaint, complainant, Jeffrey Del Fuoco against Charles B. Wells August 19, 2004; Also a Statement in Support of Complaint written 9/23/2004, filed 11/29/2004
87	Sept 28, 2004	Exhibit B Letter from Barbara Linthicum of Florida Elections Commission to Jeffrey Del Fuoco re: receipt of complaint that appears legally insufficient
88	11/29/2004	Exhibit C State of Florida Elections Commission Confidential Complaint, complainant, Jeffrey Del Fuoco against Charles B. Wells states a third party witness as Joseph Burnhart, pursuant to Letter of Sept 28, 2004 filed 11/29/2004, received 10/11/2004
89	October 15, 2004	Letter from Barbara M. Linthicum of Florida Elections Commission to Jeffrey Del Fuoco stating upon review of the complaint, that it is still legally insufficient, and requires more specific reasons for the complaint to be legally sufficient
90		Del Fuoco Email to John Sugg re: retention of Stephen Kohn, Esq. mentions Judge Holder
91	March 2, 2005	Order in Jeffrey Del Fuoco v. Charles B. Wells, etc, et al., US District Court Middle District of Florida
92	August 27, 2004	Deposition of Jeffrey J. Del Fuoco, AUSA and Exhibits
93	August 31, 2004	Deposition of Jeffrey Downing, AUSA and Exhibits

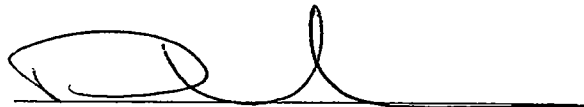
No.	Date	Description
94	March 7, 2005	Affidavit of Colonel Brian D. Bourne
95	May 4, 2005	Deposition of John T. Crow with Exhibits
96	May 4, 2005	Deposition of Matthew Kloskowski
97		Movie files (.avi) demonstrating Photoshop editing capabilities
98	September 10, 2004	Exhibits to Deposition of Bruce Dekraker
99	May 19, 2005	Exhibits to Deposition of Bruce Dekraker (including enlargements)
100		Annotated and unannotated photographs (including enlargements) of both copies of the purported Holder paper and KELjd1-171 documents
101		Computer with word processing applications <sup>6</sup>
102	September 1, 2004	Deposition of F. Dennis Alvarez and Exhibits
103	September 15, 2004	Deposition of William J. Walls and Exhibits
104		Deposition of David Greetham
105		Deposition of Robert H. Bonanno
106	November 8, 2002	Letter from Holder to Department of Justice re status of investigation
107	August 20, 2004	Rule 11 Motion served in Del Fuoco v. Wells

<sup>6</sup> Due to the prohibitively high cost of replication, Respondent is making this exhibit available for inspection at a time convenient to Special Counsel.

No.	Date	Description
108		All documents and materials provided to the JQC by the Thirteenth Judicial Circuit or its agents or employees
109		All texts, publications, and writings referenced in the Deposition and Exhibits thereto of Linda James
110		All computer programs referenced in the Deposition of Richard Kane
111		All documents produced by the Judicial Qualifications Commission or its agents or employees in this matter

Dated: May 31, 2005

Respectfully Submitted,



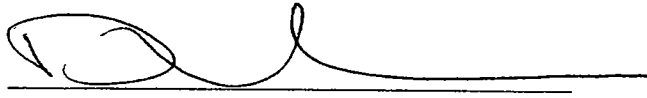
David B. Weinstein, Esq.  
Florida Bar Number 604410  
**Bales Weinstein**  
Post Office Box 172179  
Tampa, Florida 33672-0179  
Telephone No.: (813) 224-9100  
Telecopier No.: (813) 224-9109

-and-

Juan P. Morillo  
Florida Bar No.: 0135933  
**Sidley Austin Brown & Wood LLP**  
1501 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 736-8000  
Telecopier: (202) 736-8711  
Counsel for Judge Gregory P. Holder

## **CERTIFICATE OF SERVICE**

I certify that on May 31, 2005, a copy of the foregoing has been served by Federal Express to: Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.

  
\_\_\_\_\_  
Attorney

TAB 6

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA  
CASE NO.: 02-487

INQUIRY CONCERNING JUDGE  
GREGORY P. HOLDER;

SUPREME CT. CASE NO. SC03-1171

ORDER ON ENTITLEMENT TO COSTS

The Hearing Panel has entered its order dismissing the charges in this case after a full evidentiary hearing. The Hearing Panel recommends that the Court award costs in favor of Judge Holder in accordance with Rule of Judicial Administration 2.140(c) and In re: Hapner, 737 So. 2d 1075 (Fla. 1999). The appropriate amount of such costs will be considered by the Hearing Panel upon the filing of a motion and detailed schedules of those costs by counsel for Judge Holder.

DONE AND ORDERED this 23rd day of June, 2005.

FLORIDA JUDICIAL QUALIFICATIONS  
COMMISSION

By: \_\_\_\_\_

JUDGE JOHN P. KODER,  
Chairman, Hearing Panel,  
Florida Judicial Qualifications  
Commission  
1110 Thomasville Road  
Tallahassee, Florida 32303  
850/488-1581  
850/922-6781 (fax)

Copies furnished in accordance with the attached list.

David B. Weinstein  
Counsel to the Judge  
Post Office Box 172179  
Tampa, FL 33674-0179  
(813) 224-9100  
(813) 224-9109 (fax)

Juan Morillo  
Steven T. Cottreau  
Counsel to the Judge  
1501 K. Street, N.W.  
Washington, DC 20005  
(202) 736-8000  
(202) 736-8711 (fax)

Charles P. Pillans, III  
Special Counsel  
The Bedell Building  
101 East Adams Street  
Jacksonville, FL 32202  
(904) 353-0211  
(904) 353-9307 (fax)

Thomas C. MacDonald, Jr.  
General Counsel  
1904 Holly Lane  
Tampa, Florida 33629  
(813) 221-2500  
(813) 258-6265 (fax)

John Beranek  
Counsel to the Hearing Panel  
Ausley & McMullen  
P.O. Box 391  
Tallahassee, Florida 32302  
(850) 224-9115  
(850) 222-7560 (fax)

Brooke Kennerly  
Florida Judicial Qualifications  
Commission  
1110 Thomasville Road  
Tallahassee, Florida 32303  
(850) 488-1581  
(850) 922-6781 (fax)

TAB 7



**IN THE SUPREME COURT OF FLORIDA**

INQUIRY CONCERNING  
A JUDGE NO. 02-487

Supreme Court Case  
No.: SC03-1171

**RESPONDENT'S MOTION FOR AWARD  
OF ATTORNEYS' FEES**

Respondent, Judge Gregory P. Holder, moves this Court to enter an order awarding Respondent the attorneys' fees incurred by him in the defense of this proceeding. The grounds on which this motion is based are set forth below.

1. Judge Holder was the subject of an investigation by an Investigative Panel of the Judicial Qualifications Commission, which resulted in the filing of a Notice of Formal Charges on July 16, 2003.

2. In order to defend himself against these charges, Judge Holder was forced to retain counsel and is obligated to pay them reasonable fees for their services.

3. After significant discovery regarding the charges, a trial was held before a Hearing Panel of the Judicial Qualifications Commission ("JQC") from June 6 to June 14, 2005.

4. On June 23, 2005, the Hearing Panel entered an Order of Dismissal through its Chairman, Hon. John P. Kuder, unanimously dismissing the charges against Respondent after a full hearing on the evidence.

5. The public policy of the State of Florida, as set forth in its common law and statutes, requires that Judge Holder be reimbursed for the attorneys' fees he has incurred in successfully defending himself against these charges. *Thornber v. City of Ft. Walton Beach*, 568 So.2d 914 (Fla. 1990); *Ellison v. Reid*, 397 So. 2d 352 (Fla. 1<sup>st</sup> DCA 1981); *see also*, Florida Equal Access to Justice Act, § 57.111(2), Fla. Stat. (2004).<sup>1</sup>

6. Judge Holder's defense satisfies the requirements for an award of attorneys' fees as set forth in *Thornber*. 568 So. 2d at 917. These charges arose out of or in connection with the performance of Judge Holder's official duties and his defense served a public purpose by, among other things, a) resulting in a well qualified and respected Circuit Court Judge with a significant case load continuing his public service in the Thirteenth Judicial Circuit and avoiding the disruption, time, and expense to parties, their counsel, and successor judges that would have resulted from the reassignment of Judge Holder's docket, and b) upholding the confidence of the citizens of this State in the integrity of the judicial system and the Respondent. *See Notice of Formal Charges* at p. 3.

---

<sup>1</sup> While the Equal Access to Justice Act does not expressly apply to courts, the policy underlying the Act should apply to this matter and supports an award of Respondent's attorneys' fees.

7. The attorneys' fees set forth in the attached Appendix are reasonable and were necessarily incurred in Judge Holder's successful defense. Respondent will submit additional documentation of these fees and their necessity and reasonableness at or before a hearing on this motion or in accordance with an order establishing a procedure for the resolution of this matter and attendant deadlines.

8. Respondent requests the appointment of a special master to consider evidence on the reasonableness and necessity of the requested fees and to determine the amount due.

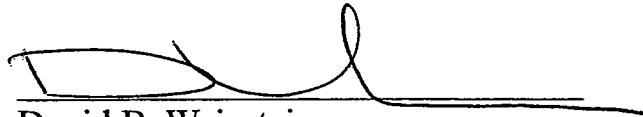
WHEREFORE, Respondent, Judge Gregory P. Holder, respectfully requests this Court to enter an order (1) awarding Respondent attorneys' fees in the amount of \$1,779,691.81, or other appropriate amount as established by the proof, against the Judicial Qualifications Commission or an appropriate alternative party,<sup>2</sup> to bear interest at the legal rate, and (2) appointing a special master to determine the amount of fees due.

---

<sup>2</sup> Public officials are entitled to reimbursement for legal fees "at public expense," often by their employers. *Thornber*, 568 So. 2d at 916 (city council members' attorneys' fees taxed against city government). In this case, Judge Holder is not employed by the JQC. However, based on the law in this State, the JQC, Judge Holder's employer, or other appropriate alternative party, should reimburse Respondent for legal fees incurred in this proceeding. *Ellison*, 397 So. 2d at 353-354 (Palm Beach County property appraiser's attorneys' fees paid from budget approved by Department of Revenue).

Dated: July 25, 2005

Respectfully Submitted,



David B. Weinstein  
Florida Bar Number 0604410

Jonathan C. Koch  
Florida Bar Number 0364525  
Kimberly S. Mello  
Florida Bar Number 0002968

**Bales Weinstein**  
Post Office Box 172179  
Tampa, FL 33672-0179  
Telephone No.: (813) 224-9100  
Telecopier No.: (813) 224-9109


-and-

Juan P. Morillo  
Florida Bar Number 0135933  
Steven T. Cottreau  
Specially Admitted  
**Sidley Austin Brown & Wood LLP**  
1501 K Street, N.W.  
Washington, D.C. 20005  
Telephone: (202) 736-8000  
Telecopier: (202) 736-8711

Counsel for Judge Gregory P. Holder

### CERTIFICATE OF SERVICE

I certify that on July 25th, 2005, a copy of the foregoing, Respondent's Motion for Award of Attorneys' Fees, has been served by regular U.S. Mail to: Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, FL 32302; Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629; and Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell, Ditmar DeVault, Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202. A courtesy copy has been provided by U.S. Mail to the Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501.

  
\_\_\_\_\_  
Attorney

Holder adv JQC  
FL. Supreme Court Case No. SC03-1171

FEE EXHIBIT

FIRM

AMOUNT

Bales Weinstein	\$ 1,194,947.50
Sidley Austin Brown & Wood	\$ 533,627.50
James, Hoyer, Newcomer & Smiljanich	\$ <u>51,116.81</u>
TOTAL	\$ 1,779,691.81

EXHIBIT A

TAB 8



Office of the General Counsel  
Department of the Air Force  
Washington, DC

**FROM: E. DAVID HOARD, SAF/GCN**

1740 AIR FORCE PENTAGON, ROOM 4C921, WASHINGTON, DC 20330-1740  
(703) 693-7315 FAX: (703) 693-1567 (DSN 223) E-MAIL: hoardD@af.pentagon.mil

**FAX TO: Judge Greg Holder**

FAX: (813) 276-2079

09/05/97 -- 1:48 PM

This is the first of 24 pages.

Re: AWC Paper

Comment: Greg,

Per your request. E-mail me if all this doesn't go through.

Dave



AIR WAR COLLEGE ASSOCIATE PROGRAMS  
AIR UNIVERSITY

~~8~~  
6TH EDITION

AN ANALYSIS OF THE ANGLO-AMERICAN  
COMBINED BOMBER OFFENSIVE IN EUROPE  
DURING WORLD WAR II, 1942-1945  
USING THE MOWBRAY STRATEGY/PROCESS MODEL

by

*Lt Col Gregory P. Helder, USAFR*

E. David Hoard

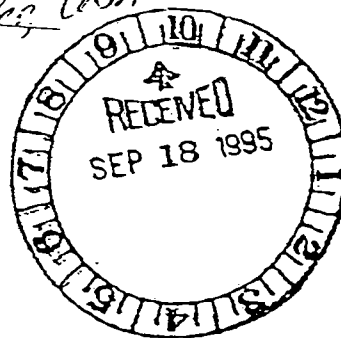
~~CSA~~

AFLSA/JACE

*our address*  
1501 Wilson Boulevard, #629  
Arlington, VA 22209

Seminar No. 080G

*C59B*



A RESEARCH PAPER SUBMITTED TO THE FACULTY

IN

FULFILLMENT OF THE VOLUME I  
OPTION 1  
WRITING ASSIGNMENT

January 1996-

1998

## CERTIFICATE

I have read and understand the Academic Integrity Section of the *Program Guide*. I certify that the creative process of researching, organizing, and writing this research report represents only my own work.

EDDILE

E. DAVID HOARD, GS-14

Gregory P. Holder, Lt Col,

USAFR

## DISCLAIMER

This research report represents the views of the author and does not necessarily reflect the official opinion of the Air War College or the Department of the Air Force. In accordance with Air Force Instruction 51-303, it is not copyrighted, but is the property of the United States Government and is not to be reproduced in whole or part without permission of the Commandant, Air War College, Maxwell Air Force Base, Alabama.

TAB 9

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

CASE NO.: 02-487

INQUIRY CONCERNING JUDGE

SUPREME CT. CASE NO.:  
SC03-1171

GREGORY P. HOLDER

---

EXCERPT OF:

PROCEEDINGS

BEFORE:

Judicial Qualifications Commission  
Hearing Panel

DATE:

June 13, 2005

PLACE:

Hillsborough County Courthouse  
800 East Twiggs Street  
Tampa, Florida

REPORTED BY:

Sherry L. Frain  
Notary Public  
State of Florida at Large

**ORIGINAL**

---

**RICHARD LEE REPORTING**

(813) 229-1588

email: rlr@richardleereporting.com

**TAMPA:**

100 North Tampa Street, Suite 2060  
Tampa, Florida 33602

**ST. PETERSBURG:**

535 Central Avenue  
St. Petersburg, Florida 33701

## JQC PANEL MEMBERS:

John Kuder, Chair  
 John P. Cardillo  
 Howard Coker  
 Rick Morales  
 Thomas Freeman  
 Leonard Haber

## APPEARANCES:

CHARLES P. PILLANS, ESQUIRE

- and -

HEIDI M. ANDERSON, ESQUIRE

Bedell, Dittmar, DeVault, Pillans & Cox, P.A.  
 The Bedell Building  
 101 East Adams Street  
 Jacksonville, Florida 32202  
 Appeared for JQC

DAVID B. WEINSTEIN, ESQUIRE

JEFFREY PARMER, ESQUIRE

Bales Weinstein  
 Suite 100  
 625 East Twiggs Street  
 Tampa, Florida 33602

- and -

STEVEN T. COTTREAU, ESQUIRE

JUAN P. MORILLO, ESQUIRE

Sidley, Austin, Brown & Wood, L.L.P.  
 1501 K Street N.W.  
 Washington, D.C. 20005  
 Appeared for Judge Holder

JOHN BERANEK, ESQUIRE

Ausley & McMullen  
 227 South Calhoun Street  
 Tallahassee, Florida 32301  
 Appeared for The Panel

INDEXPAGE

Cross-examination by Mr. Pillans

3

1           The excerpt of proceedings, on the 13th  
2 day of June, 2005, at Hillsborough County  
3 Courthouse, 800 Twiggs Street, Tampa, Florida,  
4 reported by Sherry L. Frain, Notary Public, State of  
5 Florida at Large.

6                   \*   \*   \*   \*   \*   \*   \*   \*   \*

7                   GREGORY P. HOLDER,  
8 having been duly sworn to tell the truth, the whole  
9 truth, and nothing but the truth, was examined and  
10 testified as follows:

11                   CROSS-EXAMINATION

12 BY MR. PILLANS:

13           Q       Good morning.

14           A       Good morning, sir.

15           Q       Judge Holder, in 1997/1998, you were a  
16 circuit judge of the 13th Judicial Circuit?

17           A       Yes, sir, I was.

18           Q       You were also a lieutenant colonel in the  
19 United States Air Force. Would that be the  
20 Reserves?

21           A       Yes, sir.

22           Q       And it was in 1997 that you took the Air  
23 War College course that we've heard so much  
24 testimony about?

25           A       Yes, sir. I signed up for that course

1 almost eight years ago this month.

2 Q And do you recall that you began the  
3 course around August 14th of 1997?

4 A I know it was August.

5 Q And it concluded in June of '98?

6 A Yes.

7 Q How many lessons were there?

8 A I have no specific recollection. But the  
9 best approximation is 45 actual weekly meetings.  
10 There were approximately 14 or 15 in each block.  
11 There were three blocks of instruction. And then,  
12 of course, we had separate assigned readings that we  
13 were examined on as well after those three blocks  
14 were completed.

15 Q What day of the week were the sessions  
16 held?

17 A I have no recollection of the day of the  
18 week, sir.

19 Q Was it always on the same day of the  
20 week?

21 A Generally. There may have been  
22 exceptions based upon, again, the group, which was  
23 approximately 15 people, officers of all services.  
24 But generally on the same day of the week.

25 Q And what time of day were they held?

1           A       They were held in the evenings.

2           Q       How long were the sessions?

3           A       To the best of my recollection, they were  
4 two, two and a half hours. There was a required  
5 time limit for each meeting. I don't specifically  
6 recall what that was, but I'm certain it was over  
7 two hours.

8           Q       All right. And one of the requirements  
9 for the completion of this course was that you take  
10 certain tests in each of the three sections? Or  
11 were they called volumes?

12          A       There were three examinations that were  
13 given on each volume, yes, sir.

14          Q       The first time you took it, you flunked  
15 the first one, didn't you?

16          A       I did in November of 1997, yes, sir.

17          Q       Because you hadn't read the materials?

18          A       I had not read the materials, nor had I  
19 studied the dirty purples.

20          Q       Now, you took the Air War College course,  
21 as I understood your direct examination, because  
22 Colonel Sears wanted to see you promoted to colonel?

23          A       Colonel Sears wanted me to take the Air  
24 War College. He wanted all of his military judges  
25 to have the Air War College. And certainly it was



1 his desire that all of his military judges be  
2 promoted to rank of colonel.

3 Q You were aware, were you not, that the  
4 fact of taking this course was -- while not an  
5 absolute prerequisite, it was a significant event in  
6 the course of being promoted to colonel, wasn't it?

7 A I wouldn't say a significant event. I  
8 would say that it was absolutely helpful, yes, sir.  
9 It was part of your military record that was  
10 reviewed by the promotion board.

11 Q And ultimately you were promoted to  
12 colonel?

13 A I was.

14 Q And your testimony was that you had a big  
15 ceremony in the Hillsborough County Courthouse?

16 A We did, yes, sir.

17 Q And that was the old courthouse, I  
18 assume?

19 A Yes, sir, it was.

20 Q You invited all your friends that had  
21 helped you achieve the rank of colonel?

22 A I invited the community, and we had  
23 several hundred people attend, yes, sir.

24 Q All right. Now, going back to the  
25 requirements of this course, I believe you testified

1 that you recalled the course was divided into Volume  
2 1, Volume 2 and Volume 3. These were the three  
3 sections of the course?

4 A Yes, sir.

5 Q And there was a writing requirement?

6 A There was.

7 Q And if you chose to do the writing  
8 requirement in Volume 1 -- in other words, the first  
9 session -- that it was -- in fact, the paper was due  
10 no later than January 5, 1998. Right?

11 A Yes, sir. That's correct.

12 Q You testified on direct examination that  
13 you know David Hoard?

14 A Yes, sir, I do.

15 Q But isn't it true that you do not  
16 specifically recall asking Mr. Hoard to provide you  
17 with a copy of his paper?

18 A Not as I sit here today.

19 Q And you didn't when you gave your  
20 deposition, did you?

21 A That's correct.

22 Q I put in front of you what's been marked  
23 as Commission or Petitioner's Exhibit 1, which is  
24 the cover page or is the document from Lieutenant  
25 Colonel Hoard, is it not?

1 A Yes, sir, it is.

2 Q The cover page says -- this is a fax  
3 cover sheet -- "Per your request, e-mail me if this  
4 doesn't go through. David." Do you see that?

5 A Yes, sir.

6 Q So you must have made a request for the  
7 paper. Correct?

8 A I can only state, that's what this  
9 document says. And I can testify, as I have, that I  
10 have no recollection of that conversation.

11 Q All right. In any event, you do  
12 acknowledge that you received this faxed paper from  
13 Lieutenant Colonel Hoard. Correct?

14 A Yes, sir. I absolutely did receive this.

15 Q Now, on the second page is the cover  
16 sheet for Lieutenant Colonel Hoard's paper.  
17 Correct?

18 A It's the title page, yes, sir.

19 Q And the handwritten material on this page  
20 is yours. Correct?

21 A It absolutely is.

22 Q Do you recall when you gave your  
23 deposition, you said that you were not certain that  
24 that was your handwriting, you had no recollection  
25 of having written those notes?

1 A That's correct.

2 Q But now you admit it is your handwriting?

3 A I absolutely admit that.

4 Q All right. The edition is crossed out.  
5 It says "6th Edition" and crossed out and "8" is  
6 written in?

7 A Yes, sir.

8 Q The 8th Edition was the edition of the  
9 Air War College seminar you took. Right?

10 A It certainly was.

11 Q You crossed out Lieutenant Colonel E.  
12 David Hoard's name and wrote yours. Right?

13 A Yes, sir.

14 Q You crossed out his address and wrote  
15 "our address." Correct?

16 A Yes, that's correct. That's what's on  
17 the document, and that's what I wrote.

18 Q Seminar number, you crossed out the  
19 seminar number that was on there and wrote -- I  
20 think it's "C," or something, 58B. Correct?

21 A It appears to be Charlie, 59 Bravo, yes,  
22 sir.

23 Q 59 designates this was a MacDill Air  
24 Force Base location for the seminar. Right?

25 A That, I can't tell you.

1 Q And "B" indicates that there were two  
2 seminars given at MacDill that year, Seminar A and  
3 Seminar B. Correct?

4 A I can't tell you that either.

5 Q Well, where did you get the 59B number  
6 from?

7 A I'm certain it was on course materials  
8 that we were provided, but I don't have any specific  
9 recollection of that.

10 Q The next page has a certificate that "the  
11 person preparing this paper has read and understands  
12 the academic integrity section of the program guide  
13 and has certified that the creative process of  
14 research and organizing and writing this research  
15 paper represents only my own work." Do you see  
16 that?

17 A Yes, sir. That's what Colonel Hoard  
18 wrote on his paper.

19 Q That's what he wrote. You crossed out  
20 his name and printed your name below that. Right?

21 A Yes, sir.

22 Q So that would be typed on the paper that  
23 was prepared for you. Right?

24 A Well, no. My actual certificate page was  
25 different on my paper.

1 Q We'll come to that.

2 A Yes.

3 Q That is your handwriting where you  
4 crossed out his name and put his name on there.  
5 Right?

6 A It absolutely is my handwriting.

7 Q Now, isn't it true that you got more than  
8 one paper from Lieutenant Colonel Hoard?

9 A Either from Colonel Hoard or from others,  
10 but I know that I had Colonel Morrow's paper. And  
11 based upon the testimony of Colonel Vento,  
12 apparently he gave me a paper as well. I know I had  
13 three papers.

14 Q Isn't it true that Colonel Hoard sent you  
15 three or four papers?

16 A I believe that he sent me more than one.  
17 But I know I only had three. And with Colonel  
18 Vento, I can testify that he gave me his. As I sit  
19 here today, I don't recall other than Colonel  
20 Hoard's paper and perhaps Colonel Morrow's paper.

21 Q Do you recall giving a statement to  
22 Colonel Leta when he came in to see you?

23 A Colonel Leta, yes, sir.

24 Q Leta. You're correct. Is that the  
25 statement?

1           A       If I could have just a moment. I cannot  
2       authenticate the document. I do recognize certain  
3       of the statements within this document as having  
4       been mine on March 7, 2003, yes, sir.

5           Q       Okay. Look at Page 3 starting with Line  
6       14. And I want to read this to you and ask if you  
7       recall making this statement to the colonel.

8                   "Okay. You may have answered this. Did  
9       you talk to Dave at all about the paper, the  
10      requirements, Dave Hoard?

11                   "Answer: We talked about the  
12      requirements. It seems to me that we talked  
13      about the paper. We talked to the dirty  
14      purples, we talked about the study techniques  
15      and I told him I was taking it in a seminar.

16                   "Question: Did you ever ask him to fax  
17      you a copy of his paper?

18                   "Answer: I think he sent me three or  
19      four papers. It seems to me I had three or  
20      four papers because I remember passing them on  
21      to other people. So I think I had three or  
22      four papers. I remember they were in my desk  
23      for a long time."

24                   Do you see that?

25           A       Well, you've left portions on Line 24

1 out. If you're quoting, you've left portions out.  
2 But, yes, sir, I see what you've read.

3 Q All right. So do you think now that you  
4 got three or four papers from Colonel Hoard?

5 A I know that I had three papers. Can I  
6 state under oath that I received all three from  
7 Colonel Hoard? No, sir, I cannot.

8 Q But you do state that you put them in  
9 your desk drawer?

10 A That's true.

11 Q What became of the papers other than the  
12 one that you received from Colonel Hoard? Do you  
13 know what happened to them?

14 A No, sir. They were all contained within  
15 the same file. I kept that entire file together  
16 with my military papers in my lower left-hand  
17 drawer.

18 Q That would have been the lower left-hand  
19 drawer of the desk in your hearing room?

20 A Yes, sir.

21 Q Did you have a private office also?

22 A Yes, sir.

23 Q And you had a desk in there?

24 A I did.

25 Q You didn't keep any of your military



1 papers in your private office?

2 A No. I rarely used the private office.  
3 When I was on that side of the hall, the private  
4 office was no larger than a large restroom, to be  
5 honest with you. It was very tiny. So I rarely  
6 used it. I kept my computer and all of the files  
7 that I used on a daily basis within my hearing-room  
8 desk.

9 Q Now, I want to ask you some questions  
10 about the paper that's Petitioner's Exhibit 2. Look  
11 at, I'll call it, Page ii. It's two little "i"s,  
12 second page.

13 A Yes, sir.

14 Q That's the certificate that you signed on  
15 the paper that you submitted?

16 A Yes, sir.

17 Q And it says, "I have read and understand  
18 the academic integrity section of the program guide.  
19 I certify that I have not used another student's  
20 research work and that the creative process of  
21 researching, organizing and writing this research  
22 report represents only my own work. I have read the  
23 instructions regarding the purpose, scope, format  
24 and content of this effort and have accomplished the  
25 research paper in accordance with the appropriate

1 research report review checklist." You see that, of  
2 course? Now, is that your signature under that  
3 certificate?

4 A Yes, sir. That appears to be my  
5 signature.

6 Q It's true that when Colonel Leta first  
7 interviewed you and asked you about your paper, you  
8 said you could not recall the topic that you wrote  
9 on? Isn't that true?

10 A Absolutely true.

11 Q But you did write on what I'll refer to  
12 in shorthand, if you'll allow me, the "Combined  
13 Bomber Offensive in Europe," that was one of the six  
14 topics you could choose from. Correct?

15 A Yes, sir.

16 Q Isn't it true that you were the only  
17 person in this seminar, 59B from MacDill Air Force  
18 Base, that submitted a paper on that topic?

19 A I specifically don't have any knowledge  
20 of that. I've seen that in other persons'  
21 testimony.

22 Q How many people ultimately were in your  
23 seminar?

24 A I believe the records reflect, as I  
25 stated, approximately 15. I don't know how many

1 actually graduated. It might have been 20.

2 Q You testified on direct examination and  
3 Ms. Nasco testified that she typed the paper?

4 A Yes, sir.

5 Q It's true, is it not, that when Colonel  
6 Leta came to see you, you told him, "I typed it. I  
7 typed every bit of it myself"?

8 A Yes, sir.

9 Q You had forgotten or it had slipped your  
10 mind somehow that your judicial assistant had typed  
11 your paper?

12 A Yes, sir. Specifically Lori's third and  
13 perhaps final injury was May of 1998. And after  
14 that injury, she subsequently underwent three  
15 surgeries. She took over a year-and-a-half medical  
16 leave. And literally from May of 1998 until her  
17 retirement on disability, I typed virtually  
18 everything. I opened mail, I stamped, received. I  
19 conformed mail. I licked, addressed if we had to,  
20 mailed out the mail. And that from that point,  
21 again, from May of 1998 until March 7, 2003 when I  
22 spoke to Colonel Leta, I had typed virtually every  
23 document of any substance in my office.

24 Q Okay. And when Colonel Leta left your  
25 office, he told you, did he not, if you can think of

1 anything else that you needed to supplement your  
2 statement to please contact him?

3 A Yes, sir.

4 Q I put before you Commission's Exhibit 15.  
5 This is a copy of an e-mail that you sent to  
6 Mr. Leta or Colonel Leta, on Friday, March 7 of, I  
7 guess it would be, 2003?

8 A Yes, sir.

9 Q And in the second paragraph it says, "I  
10 called my now retired former judicial assistant, and  
11 she remembers typing a portion of the paper on our  
12 system after hours." Is that correct?

13 A Yes, sir.

14 Q So you corrected your statement to  
15 Colonel Leta with respect to who it was that had  
16 typed the paper?

17 A Yes, sir, I certainly did.

18 Q This time in this document, you said she  
19 typed a portion of it?

20 A Yes, sir.

21 Q Now, on Thursday when you testified on  
22 direct examination, you acknowledged that the paper  
23 was completed on January 5, 1998. Is that correct?

24 A Yes, sir, the final edits were made that  
25 morning.

1 Q That was the day the paper was due?

2 A It was. It had to be postmarked that  
3 day.

4 Q And you testified that you came in over  
5 the weekend and worked on it over the weekend?

6 A Yes, sir.

7 Q Now, if Monday was the 5th of January,  
8 1998, then Sunday obviously would have been the 4th.  
9 Right?

10 A Yes.

11 Q Did you come into your office on the 4th?

12 A I'm certain I did.

13 Q We have seen what's referred to as the  
14 zero byte file that was found on your computer that  
15 shows that someone opened a file and it was last  
16 modified, if you'll allow me to use that word,  
17 around 8:10 p.m. on Sunday night, January the 4th.  
18 Were you in your office on Sunday night, January the  
19 4th, working on this paper?

20 A I'm certain I would have been. I have no  
21 specific recollection, but I'm certain I would have  
22 been.

23 Q Do you recall what you were doing on the  
24 paper on Sunday night, January 4th, at 8:10?

25 A Conducting edits.

1 Q From your computer?

2 A Yes, sir.

3 Q Now, on direct examination, you were  
4 asked whether the period of time that the paper was  
5 being prepared was stressful. Your answer was, if  
6 you'll allow me, "It was an active period in my  
7 life, just as virtually every week is in my life."  
8 Do you recall giving that answer?

9 A Yes, sir.

10 Q The question was, "Did you say that  
11 during that time frame it was a stressful period in  
12 your life?" "No, it was an active period in my  
13 life, just as virtually every week is in my life."  
14 That's what you testified to on Thursday?

15 A Yes, as I just stated, yes. That was my  
16 testimony on Thursday. But I think I'd have to say  
17 that clearly and thinking back, as I've thought  
18 about this for the past two years, this was a  
19 stressful time in my life. And I've had many  
20 stressful times in my life where we, as trial  
21 lawyers, we, as Air Force officers, have to  
22 multi-task. That's what trial lawyers do, and  
23 that's what effective trial judges do.

24 And while it was stressful, while we had  
25 the requirement of the paper, the move to the civil

1 division, I took juvenile cases with me, again, if  
2 it had become overwhelming, I simply would have  
3 elected to write this paper during the second term  
4 of this Air War College course, which was then  
5 always an option for me.

6 Q But if you had started the research, as I  
7 believe you testified on direct examination, in  
8 November, by the time of the stressful period of the  
9 move in December, you had already invested quite a  
10 bit of time into preparing this paper, had you not?

11 A By then it was virtually done. I had  
12 virtually completed the paper, had written my own  
13 paper. Lori had typed the paper, and I had  
14 completed the final edits of my paper, yes, sir.

15 Q You described the circumstances of the  
16 move and taking some of the juvenile cases with you,  
17 juvenile-court cases. And that was a very chaotic  
18 time, was it not?

19 A Well, it was a wonderful time because we  
20 were going from the juvenile division to the general  
21 civil division with much less stress.

22 Q It was a very chaotic time, though,  
23 wasn't it?

24 A Not for me. I know Lori has testified  
25 that it was chaotic for her. But, again, while I

1 would call it stressful, I would never call it  
2 chaotic.

3 Q I want to show you your deposition which  
4 you may recall I took on November 5, 2003. Do you  
5 have it?

6 A Yes, sir.

7 Q Look on Page 30 starting at Line 13 and  
8 tell me if I correctly read the answer to this  
9 question.

10 "In addition to the fact that or because  
11 of the fact that you were moving from divisions  
12 and other things, wasn't this a very chaotic,  
13 stressful time for you?"

14 Answer, "Yes, sir."

15 Did you give that answer when I took your  
16 deposition back last November, November of '03?

17 A Yes, sir, I did.

18 Q In fact, you were facing a tremendous,  
19 tremendous workload at that time, were you not?

20 A No. I mean, I had the normal workload of  
21 any general civil division judge at that time with  
22 the exception of the three, four, five juvenile  
23 cases that I elected to take with me to finish up  
24 final disposition, conduct hearings and close out  
25 supervision if we were able to do that or, if it was



1 going to termination of parental rights, return  
2 those cases to the new judge.

3 Q In fact, the workload was so tremendous,  
4 you weren't even focusing on the Air War College  
5 paper, were you?

6 A I focused on it sufficiently to complete  
7 the requirement.

8 Q But you weren't focusing on that? You  
9 were focusing on other things. Right?

10 A Again, as I've stated, multi-tasking is  
11 what we do and is what I've done for 51 years. We  
12 complete the requirement, we move on to the next  
13 task.

14 Q Do you still have up there, Judge, a copy  
15 of the statement that you gave to Colonel Leta?

16 A Yes, sir.

17 Q Look at Page 4. I'm going to read the  
18 question and an answer. You tell me whether this  
19 correctly recorded the answer that you gave at that  
20 time beginning at Line 37 by Colonel Leta.

21 "Now, did you keep a copy of your paper?

22 "Answer: No, it was poor work, you know,  
23 again, disjointed. At that point in 1998,  
24 especially January, December, in that period of  
25 time, I was in the juvenile division. And it

1           wasn't until that very month that I was  
2           assigned out of the juvenile division, and I  
3           was dealing with delinquencies, dependencies,  
4           termination of parental rights, and the  
5           workload was just tremendous, tremendous.

6                     "And there was a case that involved, in  
7           January 1997, the tragic torture of a child.  
8           Those were a tough two years. Again, at that  
9           time, I was writing the paper. I was still in  
10          the juvenile division, so my focus was  
11          different things more than the Air War  
12          College."

13                    Did you give that answer at that time?

14          A        I certainly did. And that's why on March  
15          7 of 2003, I could not remember the topic of my  
16          paper because I was focused on more important  
17          things. I was focused on the lives of children and  
18          their families, which, to me, means everything.

19          Q        Certainly. In fact, when your deposition  
20          was taken in November of '03, you could not even  
21          specifically remember if you kept a copy of the  
22          paper that you sent to Air War College. Right?

23          A        I don't recall. If you can refer me to  
24          specific testimony.

25          Q        Look at Page 34, Line 9.

1 "Did you keep a copy of what she mailed?"

2 "I don't recall as I sit here, but, you  
3 know, I'm certain I had a copy of it until I  
4 received the paper back, but I don't recall  
5 that."

6 So you didn't recall, when I took your  
7 deposition, whether you kept a copy of the paper?

8 A Well, I thought you were referring to the  
9 document that Lori mailed. And I don't know if we  
10 kept a hard copy. We had it on her C drive. We had  
11 it on my C drive. I thought we had it on her H  
12 drive, and I thought we had it on my H drive.

13 And I know that when Mr. Lawson wanted a  
14 copy, I believe that we printed it from the C drive  
15 and printed it out for him. So I thought the  
16 question referred to, again, until such time as we  
17 received a graded copy back of the paper. And I, as  
18 I sit here, don't remember if we had a hard copy or  
19 just relied upon the electronic copy.

20 Q So you think it might have been that the  
21 copy that Mr. Lawson got was one that was printed  
22 off of either your computer or Ms. Nasco's?

23 A It may have been, because I know we had  
24 it on the C drive, both C drives.

25 Q On both C drives. Right?

1           A       Yes, sir. At least I had my last  
2 iteration. She would have had the final, final  
3 document on her C drive.

4           Q       What became of your C drive?

5           A       That particular computer -- I had three  
6 hard drives within the next 12 months after the  
7 submission of that paper. I think sometime in '98  
8 to '99, three hard drives crashed. The IT folks in  
9 the courthouse finally took that computer from me.  
10 It was a Compaq, I believe. At that time I was  
11 using the docking station. And they took it from me  
12 and I never saw it again.

13          Q       And you made an effort to find what  
14 happened to Ms. Nasco's computer too, didn't you?

15          A       You have, I have, and my attorneys have,  
16 yes, sir.

17          Q       I think we can all agree that it was sold  
18 in bulk and probably ended up in Asia somewhere?

19          A       Somewhere in Asia all of those computers  
20 are now located, yes, sir.

21          Q       If they work at all today?

22          A       Yes, sir.

23          Q       We all tried to find it?

24          A       We all did our best, yes, sir.

25          Q       We did. But in one form or another,

1 your recollection is you gave a copy of your paper  
2 to Mr. Lawson?

3 A Yes, sir. Immediately after completion  
4 of the paper, Mr. Lawson asked for a copy as he was  
5 considering enrolling in the Air War College. And I  
6 did provide him a copy of my paper ungraded and Mr.  
7 Hoard's paper.

8 Q And at another point in time -- I believe  
9 your recollection is it might have been earlier --  
10 you gave him the dirty purples that you had for the  
11 course, did you not?

12 A Yes, sir.

13 Q And he never gave them back to you?

14 A No, sir. I certainly didn't want them  
15 back.

16 Q Why?

17 A I was done with the course.

18 Q Okay. Now, your testimony on direct was  
19 that you gave --

20 A At least done with that section. I'm  
21 sorry. I believe I may have given him all the dirty  
22 purples.

23 Q Your testimony on direct examination was  
24 that, in addition to Mr. Lawson, you gave copies of  
25 your paper to Mr. Vento and to Mr. Russick?

1           A       Yes, sir.

2           Q       You heard Mr. Vento's deposition by video  
3 when he said it just came in the mail, no cover  
4 letter. Is that the way you recall sending it to  
5 him?

6           A       I don't specifically recall mailing it to  
7 him. I generally recall giving it to him now that  
8 he has certainly refreshed my recollection, but I  
9 don't recall the method of transmission, no, sir.

10          Q       Why would you just send him a copy out of  
11 the blue, if, in fact, you did; in other words, just  
12 put it in an envelope with no note, no anything?

13          A       Because from early 1997 until the  
14 completion of the paper, we had discussed the  
15 course. We had discussed the course requirements.  
16 And indeed, as Mr. Vento testified, he had provided  
17 me with a copy of his paper. He did provide  
18 guidance on the paper, what the Air War College was  
19 looking for, and so I sent him my paper for his  
20 review.

21          Q       Do you recall that when you were  
22 interviewed by Colonel Leta, you told him that you  
23 didn't show your paper to anyone at that time,  
24 meaning the time when it was completed?

25          A       I believe I was referring to while it was

1     being written. I think he asked me who would have  
2     read it and he asked me if my wife read it, and I  
3     said no. That's certainly what I was referring to.  
4     I did state within this statement that I had given  
5     it out to persons that I could not recall.

6           Q       What you meant to say to Colonel Leta,  
7     then, was that you didn't give a copy of the paper  
8     to anybody while it was being written?

9           A       Well, I don't know what I meant to say.  
10    That was certainly my answer, and that's certainly  
11    correct. While it was being written, during its  
12    research and writing, I didn't provide it to anyone  
13    until it was completed.

14          Q       Do you recall Colonel Leta asking you,  
15    after some discussion about your having enemies here  
16    in the courthouse, if there was anyone else he  
17    should talk to about your paper? Do you recall him  
18    asking you that?

19          A       Yes, sir.

20          Q       And you asked whether he meant character  
21    witnesses, and he said, "No, I'm talking  
22    specifically on the allegation." Do you recall him  
23    asking you that?

24          A       Yes, sir.

25          Q       You said, "No one would have any

1 knowledge of that. My judicial assistant at that  
2 time, who retired for health reasons, knows that I  
3 typed my paper, that I typed my paper. But other  
4 than that" -- and Colonel Leta interrupts you. "I  
5 mean, you didn't show your paper at that time to  
6 anybody?" "No."

7 Is that what you told Colonel Leta?

8 A During that portion of the interview,  
9 yes, sir.

10 Q You again told him that you typed the  
11 paper during that portion of the interview?

12 A Yes, sir.

13 Q And, just like trying to find the  
14 computer, you searched and the commission has  
15 searched, and no one whom you gave a copy has it  
16 today. Right?

17 A No one, not even the United States Air  
18 Force, no, sir.

19 Q Now, you got the graded paper back.  
20 Right?

21 A Yes, sir.

22 Q And it came back, it was a marginal paper  
23 because it was disjointed. Correct?

24 A The overall grade was satisfactory, but  
25 there was a comment with respect to one aspect of



1 the paper having been marginal. And I believe that  
2 referred to, again, the transitions because I had  
3 cut significant portions of the paper as it exceeded  
4 the length.

5 Q You told Colonel Leta that you threw it  
6 away? Didn't you tell him that?

7 A I believe somewhere in that document,  
8 yes.

9 Q Look on Page 4. I've already read it,  
10 and I'll read this part again.

11 "Now, did you keep a copy of your paper?

12 "No, it was poor work, you know, again  
13 disjointed."

14 Is that what you told him at that time?

15 A That was my statement at that time, yes,  
16 sir.

17 Q Do you recall Colonel Leta also asked you  
18 if you recalled seeing comments on the paper that  
19 you got back, and you answered on Page 6 of the  
20 statement?

21 "Oh, no, I don't recall, no. I looked at  
22 it. And what I really looked at again, given  
23 what was going on in my personal life at that  
24 time as far as the work here, was did I pass or  
25 not, did I meet the requirement or not.

1 "And as far as anything else went, I  
2 don't remember when in the course when we wrote  
3 the paper, if it was the first section or the  
4 second section. I don't recall. I think you  
5 had an option at that point. What option I  
6 took, I don't recall that either. But I didn't  
7 really look at the comments other than the  
8 final grade, and then I just threw it away,  
9 never looked at it again."

10 Is that correct? That's what you told  
11 Colonel Leta?

12 A That is what I told Colonel Leta, yes,  
13 sir.

14 Q But now you've testified that instead of  
15 throwing it away, you put it and Lieutenant Colonel  
16 Hoard's paper in the lower left-hand drawer of your  
17 desk in the hearing room?

18 A Yes, sir, that's true. Let me just  
19 state, since March 7, 2003, 27 months and six days,  
20 I thought about nothing than this paper, the Air War  
21 College and this proceeding. My recollection today  
22 is much clearer than it was on March 7, 2003 at 1  
23 p.m.

24 Q You do have a good memory for details,  
25 generally speaking, do you not?

1           A       I have an excellent memory for dates and  
2 numbers. I served as an engineer in the Air Force,  
3 and dates and numbers have always been where I've  
4 excelled. Events not as good. But certainly dates  
5 and numbers, yes, sir.

6           Q       Do you recall the paper had a grade and  
7 remarks on it, handwritten remarks critiquing the  
8 paper?

9           A       Yes, sir.

10          Q       Did it come with a transmittal letter?

11          A       I believe that it did.

12          Q       Did you save the transmittal letter?

13          A       It was with the paper.

14          Q       It was among the things that you later  
15 found missing?

16          A       Yes, sir.

17          Q       In your direct examination, you said that  
18 you would from time to time check to see that paper  
19 -- or the papers when you were going through that  
20 drawer on the desk in the hearing room?

21          A       Yes, sir. I was required on a monthly  
22 basis to submit Air Force Form 40As, which are  
23 records of inactive duty. Much of the duty I  
24 performed for the Air Force Reserve was done for no  
25 pay. I would type out the form and send it up

1 to the ARPC, Air Reserve Personnel Center. And so I  
2 would file those documents chronologically in that  
3 same drawer in a separate file folder.

4 Q Were the documents in that drawer in file  
5 folders?

6 A They were in a separate file folder, yes,  
7 sir.

8 Q In that drawer?

9 A Yes, sir.

10 Q It wasn't just things that were loose in  
11 the file?

12 A No, no, I had a fairly organized file  
13 folder, filing system. Some would say anal and  
14 rigid, and some would say organized.

15 Q I believe your testimony on Thursday was  
16 that the last time you saw the papers in that file  
17 was in 2001. Right?

18 A Yes, sir.

19 Q Now, you recall Judge Bonanno having been  
20 found by Ms. Morgan in your office. Correct?

21 A Yes, sir, I do.

22 Q Do you remember that that was in July of  
23 2000?

24 A July 27, 2000, Thursday evening.

25 Q You saw the paper in the drawers then at

1 some point in time after that. Correct?

2 A Yes, sir.

3 Q So he didn't take them?

4 A I can't testify to that under oath,  
5 Mr. Pillans.

6 Q You know he didn't take them on July 26  
7 or 7, 2000?

8 A I know I saw that file in my drawer  
9 subsequent to the Bonanno entry into my office, yes,  
10 sir.

11 Q All right. You mentioned a minute ago  
12 about your duties with the Air Force. In December  
13 of 1997, in addition to the other things that we  
14 have covered, were you also traveling covering court  
15 martials?

16 A I covered one in early December. I don't  
17 believe there were any others other than that. It  
18 was a three-day general court martial for drug  
19 offenses at Grand Forks Air Force Base, North  
20 Dakota.

21 Q You were out at least what? Three, four  
22 days in December on that court martial?

23 A I was out -- I traveled on Thursday, I  
24 believe, the 3rd. The court convened on the 4th.  
25 We concluded court on the 5th, which was a Friday,

1 and I returned to Tampa on Saturday, the 6th of  
2 December, 1997.

3 Q Now, you testified on direct examination  
4 -- and we've heard testimony from other witnesses --  
5 that you were approached about participating in an  
6 undercover operation. Is that correct?

7 A I was approached and asked to participate  
8 as a cooperating witness in an investigation into  
9 courthouse corruption, yes, sir.

10 Q I believe your testimony was that judges  
11 were targets?

12 A There were some judges that were targets  
13 of that investigation, yes, sir.

14 Q You know who they were?

15 A Yes, sir.

16 Q As I understand it, you don't feel you're  
17 at liberty to disclose who the targets were?

18 A I am not as a witness bound by, at this  
19 point, any directives from the Department of Justice  
20 or any law-enforcement agency.

21 Q Who were the targets?

22 A The targets of that federal investigation  
23 were Judge F. Dennis Alvarez, Judge Robert Bonanno  
24 and Major Rocky Rodriguez at the Hillsborough County  
25 Sheriff's Office.

1 Q Anybody else?

2 A Not to my knowledge, sir.

3 Q I believe on direct examination, you  
4 testified that you began your cooperation in  
5 September of '01 and it lasted through May of '02.  
6 Is that correct?

7 A Approximately, yes, sir.

8 Q I put before you, Judge, a letter that  
9 you wrote that's Commission's Exhibit 30. Do you  
10 recognize it?

11 A Yes, sir, I do.

12 Q This is a letter that you wrote to the  
13 Department of Justice, Office of Professional  
14 Responsibility in which I think you were complaining  
15 that this undercover investigation that you were a  
16 part of has been, for some reason, suspended or it's  
17 not going forward?

18 A Yes, sir.

19 Q Your letter is dated what?

20 A November 8, 2002.

21 Q The first sentence is addressed to  
22 Mr. Marshall Jarrett of the Department of Justice  
23 Office of Professional Responsibility. The first  
24 sentence reads, "For the past eight months, I have  
25 provided evidence to agents of the Tampa FBI Office

1 regarding public corruption involving state judicial  
2 officials." Do you see that?

3 A It says "state judicial officers."

4 Q You're right. You're right. Do you see  
5 that? With that correction, now I have it right?

6 A Yes, sir.

7 Q The letter is dated November 8th of 2002?

8 A Yes, sir.

9 Q So if you had been involved for the past  
10 eight months, that would have put it back to about  
11 March of 2002 when you started cooperating with the  
12 FBI and Hillsborough County Sheriff's office,  
13 whoever else it was?

14 A Well, the math is correct. But I  
15 actually wrote this letter and typed it originally  
16 in July, and I called Mr. Downing complaining, and I  
17 didn't actually pull the trigger, so to speak, and  
18 send the letter out until November 8, and I forgot  
19 to make that correction.

20 Q You didn't read it again to make sure it  
21 was correct before it went out?

22 A Well, I did, but I certainly missed that  
23 error with respect to the math on the calendar.

24 Q It's a pretty significant error, isn't  
25 it, as to when you began participating in this



1 undercover operation?

2 A Well, no, sir. And I cleared that up  
3 with the agents that came to my office to take my  
4 official statement.

5 Q Either way. You either began in  
6 September of '01 or March of '02, if the math on  
7 that letter is correct. And the letter happened to  
8 be correct. Right?

9 A Yes, sir. And, as Mr. Bartoszak  
10 testified, he was in my office, along with two other  
11 agents, Kenny Sans from FDLE and Special Agent Kelly  
12 Thomas from the FBI.

13 Q So the investigation began sometime after  
14 the paper was slipped under the door -- if you  
15 accept Mr. Del Fuoco's testimony -- at his office,  
16 which was January of '02. Correct?

17 A I don't know when the official  
18 investigation began. I can only testify as to when  
19 my participation --

20 Q Your participation. At the time the  
21 paper was slipped under the door, according to Mr.  
22 Del Fuoco's testimony --

23 A Yes, sir.

24 Q -- you were not participating in any  
25 undercover investigation, were you?

1 A No, I said I was.

2 MR. MORILLO: Objection. I think that  
3 misstates Mr. Del Fuoco's testimony.

4 MR. PILLANS: Whatever the testimony is,  
5 it is, and I'll leave it at that.

6 THE COURT: Restate your question.

7 MR. PILLANS: I'll just leave it at that.  
8 I won't proceed.

9 Q Did you consider, in agreeing to  
10 participate in this undercover operation, that that  
11 in itself might constitute a violation of the Code  
12 of Judicial Conduct?

13 A Not at all.

14 Q You know there is a commission appointed  
15 by the Supreme Court to advise judges on planned  
16 conduct or future conduct?

17 A The JQC or the JAEC? I'm not certain  
18 which you're referring to.

19 Q Well, it's not the JQC. They don't give  
20 advice.

21 A The JEAC?

22 Q Right. You're aware of that commission?

23 A Yes, sir.

24 Q You can write and get an opinion or  
25 ruling on whether certain conduct would not violate

1 the Code of Judicial Conduct?

2 A I reviewed many of their opinions, yes,  
3 sir.

4 Q But you didn't consider it, the matter of  
5 your participating in an undercover operation,  
6 something that you would like to get some prior  
7 direction on before undertaking to do it?

8 A No, not at all. I was participating with  
9 law enforcement. I did suggest to Special Agent  
10 Kelly Thomas that he obtain copies of the  
11 transcripts of all of the testimony given to the  
12 Judicial Qualifications Committee investigative body  
13 as part of their investigation into those very same  
14 judges, Judge Alvarez and Judge Bonanno. But, no,  
15 at no time did I seek anyone's advice or opinion  
16 with respect to my participation as a cooperating  
17 witness with law enforcement.

18 MR. MORILLO: Your Honor, we object to  
19 this line of questioning. I want to note for  
20 the record, this proceeding is not about  
21 whether or not Judge Holder violated the  
22 Judicial Canons.

23 THE COURT: We're getting past that now.

24 MR. PILLANS: I have one more question on  
25 that subject. And I agree, he's not being

1 prosecuted for a violation of the Canon of  
2 Ethics for that conduct.

3 But I would ask you if you, before doing  
4 it, could look at Canon 5A(2) relating to  
5 extra-judicial activities and saying a judge  
6 should not engage in such activities that cast  
7 reasonable doubt on a judge's capacity to be  
8 impartial.

9 MR. MORILLO: Same objection, Your Honor.

10 THE COURT: That was your last question  
11 on that?

12 MR. PILLANS: Yes.

13 THE COURT: Last question on that.

14 A I'm certainly familiar with Canon 5A. At  
15 no time did I execute any warrants or participate  
16 with law enforcement in any way, shape or form that  
17 bore directly upon their investigation of courthouse  
18 corruption.

19 MR. PILLANS: One more question?

20 THE COURT: Next question.

21 Q Since that time, hasn't your impartiality  
22 been questioned in cases and matters in which you've  
23 exercised -- signed search warrants --

24 MR. MORILLO: Objection, Your Honor.

25 Q -- signed search warrants because it come

1 out of your participation in this undercover role?

2 THE COURT: Counsel, come to the bench  
3 for a second, please.

4 (Bench conference.)

5 Q In connection with what you did in the  
6 undercover capacity, you felt you were performing a  
7 service to law enforcement?

8 A I felt that I was fulfilling the  
9 requirements that I took on two separate occasions,  
10 once when I became a county judge and once when I  
11 became a circuit judge.

12 When I raised my right hand, I placed my  
13 left hand on the Bible and I swore to uphold and  
14 enforce the law to the best of my ability. And,  
15 yes, sir, I feel that my actions as a participating  
16 cooperating witness were consistent with the oath  
17 that I took to God and this community.

18 Q To uphold and enforce the law?

19 A Yes, sir, to the best of my ability.

20 MR. PILLANS: Thank you, Your Honor.

21 That's all I have.

22 (End of excerpt)

23

24

25

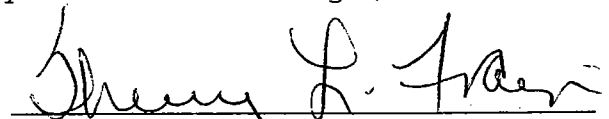
## CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Sherry L. Frain, Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the foregoing proceedings at the time and place therein designated; that my shorthand notes were thereafter reduced to typewriting under my supervision; and that the foregoing pages are a true and correct, verbatim record of the aforesaid proceedings.

Witness my hand and seal February 13, 2006, in the City of Tampa, County of Hillsborough, State of Florida.



Sherry L. Frain  
Notary Public  
State of Florida at Large



**Sherry L. Frain**  
Commission # DD365822  
Expires November 20, 2008  
Bonded Troy Fain - Insurance, Inc. 800-385-7019

TAB 10

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION  
STATE OF FLORIDA

CASE NO.: 02-487

INQUIRY CONCERNING JUDGE  
GREGORY P. HOLDER

SUPREME CT. CASE NO.:  
SC03-1171

EXCERPT OF: PROCEEDINGS  
BEFORE: Judicial Qualifications Commission  
Hearing Panel  
DATE: June 14, 2005  
PLACE: Hillsborough County Courthouse  
800 East Twiggs Street  
Tampa, Florida  
REPORTED BY: Sherry L. Frain  
Notary Public  
State of Florida at Large

**ORIGINAL**

**RICHARD LEE REPORTING**

(813) 229-1588

TAMPA:  
100 North Tampa Street, Suite 2060  
Tampa, Florida 33602

email: rlr@richardleereporting.com

ST. PETERSBURG:  
535 Central Avenue  
St. Petersburg, Florida 33701



## JQC PANEL MEMBERS:

John Kuder, Chair  
John P. Cardillo  
Howard Coker  
Rick Morales  
Thomas Freeman  
Leonard Haber

## APPEARANCES:

CHARLES P. PILLANS, ESQUIRE

- and -

HEIDI M. ANDERSON, ESQUIRE

Bedell, Dittmar, DeVault, Pillans & Cox, P.A.

The Bedell Building

101 East Adams Street

Jacksonville, Florida 32202

Appeared for JQC

DAVID B. WEINSTEIN, ESQUIRE

JEFFREY PARMER, ESQUIRE

Bales Weinstein

Suite 100

625 East Twiggs Street

Tampa, Florida 33602

- and -

STEVEN T. COTTREAU, ESQUIRE

JUAN P. MORILLO, ESQUIRE

Sidley, Austin, Brown & Wood, L.L.P.

1501 K Street N.W.

Washington, D.C. 20005

Appeared for Judge Holder

JOHN BERANEK, ESQUIRE

Ausley & McMullen

227 South Calhoun Street

Tallahassee, Florida 32301

Appeared for The Panel

1           The excerpt of proceedings, on the 14th  
2 day of June, 2005, at Hillsborough County  
3 Courthouse, 800 Twiggs Street, Tampa, Florida,  
4 reported by Sherry L. Frain, Notary Public, State of  
5 Florida at Large.

6                   \* \* \* \* \*

7                   PROCEEDINGS

8           MR. PILLANS: Members of the commission,  
9 Your Honor, may it please the commission. As  
10 special counsel to the commission, it's my duty  
11 to present the evidence in this case, and it's  
12 your duty as the hearing panel to determine  
13 whether or not the charges that have been  
14 brought against Judge Holder have been proven  
15 by clear and convincing evidence.

16           The case law makes clear, it's not proof  
17 beyond a reasonable doubt. It's what's called  
18 the medium or intermediate level of proof, but  
19 it does require clear and convincing evidence.  
20 So what I would like to begin with is go over  
21 the evidence that I think is really either  
22 undisputed or well established in the record.  
23 And what we do know has, in fact, been proven  
24 by clear and convincing evidence.

25           We know without doubt, because that's why

1 we're here, that Judge Holder was a circuit  
2 judge of the 13th Judicial Circuit in 1997 and  
3 1998 as well as a lieutenant colonel in the  
4 United States Air Force. We know he was taking  
5 the Air War College course in the '97-'98  
6 academic year because it was important for him  
7 in connection with promotion to the rank of  
8 colonel.

9 He enrolled in August of 1997 and  
10 continued in the course until he completed it  
11 successfully in June of 1998. It was the 8th  
12 edition. It was Course No. 59B at MacDill Air  
13 Force Base. And we know, because he's admitted  
14 it, he flunked the first test because he didn't  
15 read the materials, very unlike the Judge  
16 Holder portrayed to you here in this courtroom  
17 over the last six days.

18 He had a paper due, and the due date was  
19 January 5, 1998. You heard Colonel Morrow say  
20 this was a very important date, that you meet  
21 that date. You heard Mr. Russick say he tried  
22 to get an extension and couldn't get an  
23 extension of that date. So it was an important  
24 date for Judge Holder to meet his obligation to  
25 submit his paper on time.

1           He wrote on the combined air offensive  
2           topic, one of the six, which he chose. The  
3           evidence is that he was the only officer taking  
4           this particular course from MacDill Air Force  
5           Base in that academic year that wrote on that  
6           topic. We know that he received a copy of  
7           Colonel Hoard's paper. We know because the fax  
8           sheet shows us that he did and that he received  
9           it from Colonel Hoard. And Colonel Hoard's  
10          affidavit is in evidence saying that he sent it  
11          to him.

12                 We know that it is Judge Holder's  
13          handwriting on what would be the cover page  
14          changing Colonel Hoard's cover page to one that  
15          would be applicable to Judge Holder. And one  
16          thing we know is that whoever it was that  
17          slipped the papers under the doors at the Army  
18          Reserve center in Mr. Del Fuoco's office, they  
19          had a copy of the Hoard paper, the one that had  
20          been faxed to Judge Holder.

21                 We know another thing: that, although in  
22          a different format, the Hoard paper is on  
23          Lorraine Nasco's H drive, and the last modified  
24          date -- that is, the date anything was done to  
25          that paper, according to the Hillsborough

1 County computer system -- was December 5, 1997.

2 We know -- and I'll demonstrate it to  
3 you -- that virtually, if not entirely, the  
4 paper that is on the H drive was transposed --  
5 and that's my term, because I'm not a computer  
6 expert -- into what is Exhibit 2-A, what my  
7 colleagues at the Respondent's table like to  
8 call the purported Holder paper, because they  
9 like to keep it in front of your mind that  
10 there's an issue about that, but we think we've  
11 proven it.

12 And I'd like to demonstrate to you using  
13 the PowerPoint how you can tell that the H  
14 drive paper is verbatim on or incorporated into  
15 the paper that is Exhibit 2-A. Oh, this is not  
16 in evidence. This is a demonstrative exhibit.

17 Now, what we've done -- and the first  
18 one, we've labeled it the Hoard paper, and this  
19 is an excerpt from the Hoard paper. The one  
20 that is on the H drive that's from Lorraine  
21 Nasco's computer, we labeled the H drive paper.  
22 We labeled the paper that's 2-A, the Hoard  
23 paper, and I expect the other side, if this is  
24 anything other than a demonstrative exhibit,  
25 would yell at me for being so presumptuous to

1 call it the Hoard paper.

2 But what we've done is shown you some  
3 very good examples of what this -- you know,  
4 how you can tell that the H drive paper is a  
5 part of the Holder paper.

6 In Colonel Hoard's paper, he makes  
7 reference to a section about what was happening  
8 on the home front. He says the most acute fear  
9 of losing was losing the war itself, which was  
10 supplanted as a personal preoccupation by a  
11 kind of monomaniacal focus on the war and the  
12 drive to win it. Now, I focus on the word  
13 "acute."

14 Now, this footnote shows that he was  
15 pulling from a Washington Post article about  
16 what the home front was -- what was going to  
17 happen here on the home front. The article  
18 itself is Exhibit 17, and this particular quote  
19 out of it is on Page 6 out of the Washington  
20 Post article that's in evidence.

21 But the H drive paper -- which is  
22 obviously typed and not scanned -- uses the  
23 words, "the more accurate fear of losing the  
24 war itself...was supplanted." It's a mistype,  
25 it's a typo. Then when we come down to Exhibit

1 2-A, it incorporates, or picks up directly,  
2 "the more accurate fear of losing the war."  
3 The word makes no sense. It's obvious that  
4 this is a direct copy of the H drive paper.

5 This one is very simple, "airmen who  
6 sought to vindicate their faith in an  
7 autonomous military air arm" and so forth.  
8 "Sough to." This validates that is misspelled  
9 on 2-A.

10 Further, "The objective of the CBO as  
11 making possible an invasion of the continent,  
12 it can be seen as nothing less than an  
13 overwhelming success." A typo, "as" in the H  
14 drive paper and again in the Holder paper.

15 Next, B-17, which I understand is the  
16 more correct way to designate the Flying  
17 Fortress. "B-17" with a hyphen, "B17" without  
18 the hyphen.

19 Next, the same thing, with "P-51," which  
20 was the fighter escort discussed in the paper.

21 Next, in the Hoard paper, "Adolf Hitler,"  
22 which I believe is the correct way to spell his  
23 first name, "Adolph" is incorrectly spelled in  
24 both the H drive and the Holder paper. These,  
25 I submit to you, are not exhaustive. There are

1 a number of these, but are illustrative of the  
2 fact that you have to conclude that the Exhibit  
3 2-A came directly from the H drive paper.

4 Thank you.

5 And this is important, as I'll explain in  
6 more detail when we get to the issue of the  
7 claim that 2-A is fabricated. We know from the  
8 testimony of the computer people here that the  
9 H drive paper could have been -- or portions of  
10 it could have been lifted and transferred to  
11 another paper without changing the modification  
12 date of 2/5/97.

13 I'll speak briefly Lorraine Nasco's  
14 vacation records. The records that we saw and  
15 were discussed on rebuttal shows that she was  
16 on vacation except for the 29th, Monday, the  
17 29th of December. She was on vacation from  
18 December 22, '97 until January 5, 1998, that  
19 first Monday.

20 And she does not recall, based on our  
21 notes of her direct examination, whether she  
22 recalled doing any typing -- coming in and  
23 doing any typing while she was on vacation.  
24 She does not recall that there was any  
25 substitute that came in. If there was a



1 substitute, you would have had two people in  
2 the office at the same time. I think it raises  
3 serious questions as to when and if Ms. Nasco  
4 actually typed any part of the paper other than  
5 typing in the H drive paper on December 5th.

6 Judge Holder on cross-examination  
7 candidly admitted that he came in that weekend,  
8 the New Year's weekend, which Sunday was the  
9 4th, and worked on his paper. I asked him,  
10 "Were you then in the office on Sunday, January  
11 4th at 8:10 p.m.?" And he said, "Yes, I think  
12 I probably was." And I think that's probably  
13 his answer, and that's where this paper was put  
14 in final by Judge Holder himself over that  
15 weekend.

16 And he admits, of course, that that is  
17 his signature. After equivocating in earlier  
18 statements, he admits -- I believe he may have  
19 admitted it originally and then equivocated.  
20 But he admits, I believe, to Colonel Leta in  
21 here when he testified that that is his  
22 signature on the certificate certifying that  
23 this product was his own work.

24 Lieutenant Colonel Howard testified by  
25 deposition. I know you've read the deposition.

1 I'll summarize quickly what I think the  
2 evidence establishes clear and convincingly.  
3 He was the chief of operations of the  
4 non-resident program during that period.

5 Lieutenant Colonel Howe was the faculty  
6 advisor for the southeast, including the course  
7 taught at MacDill Air Force Base; that  
8 although, like most of the Air Force records in  
9 this case, they're not a model of perfection,  
10 the record indicates -- and he testified --  
11 that Colonel Holder -- Judge Holder's paper was  
12 received on January 8, 1998. The disk, which  
13 was the only way that they were going to have a  
14 permanent record of Judge Holder's paper, could  
15 not be read. And Colonel Howard testified that  
16 he personally searched through the records of  
17 the Air War College and the college would no  
18 longer keep and did not have a copy of the  
19 paper, the critique or the transmittal letter.

20 And if you'll look later and if you'll  
21 look at Mary Perry's paper that's in evidence,  
22 you'll see that there wasn't a grade on the  
23 end. She candidly admitted that. It was a  
24 critique, a separate sheet, a paper, a letter,  
25 a transmittal letter, critiquing and stating

1           what her grade was.

2                   That's something that was not kept by the  
3           Air Force. And the one relating to Judge  
4           Holder is not in the files at the Air War  
5           College. We do know he got a satisfactory  
6           grade, a grade which he candidly admitted was  
7           marginal, again, very un-Holder-like.

8                   You have the deposition of Lieutenant  
9           Colonel Howe, who was the faculty advisor. The  
10          evidence shows that this year, the 1997-'98  
11          academic year, was the only year that he graded  
12          the papers from MacDill Air Force Base. You  
13          have copies, they were distributed to you, and  
14          I'm sure you've studied them from time to time  
15          and will look at them again.

16                   But he was asked in his deposition, "Go  
17          over this paper very carefully, take your  
18          time," and then was asked, and he said that all  
19          of the handwriting on this paper is his,  
20          including -- and I'm pointing out, I know I'm a  
21          long ways away from you, but you've seen it and  
22          you've seen it up close, such things as on Page  
23          13 the arrow that runs from about two-thirds of  
24          the way down the page all the way up to the  
25          second line running through a lot of the typed

1 text. He says, "Yes, that's my arrow."

2 Slash marks, you'll see slash marks here,  
3 you'll see them on the second page. There's a  
4 slash mark in the disclaimer section on both  
5 this one and Mary Perry's paper. You'll see  
6 slash marks back in the bibliography. He  
7 testified that that was his system of checking  
8 off to see that all of the requirements of the  
9 paper as set forth in the program guide had  
10 been complied with.

11 And finally and, I think, most  
12 importantly, after I gave him at his deposition  
13 the opportunity -- and it wasn't the first time  
14 he had seen this paper by that point in time;  
15 he had an opportunity to see it before that --  
16 to look it over very carefully. And he  
17 testified that all of the handwriting -- I  
18 asked him the question, "Does all of the  
19 handwriting relate to the text?" And he said,  
20 "Yes, definitely." And all of these are, to  
21 some extent, important, particularly with  
22 respect to this contention of fabrication, and  
23 I'll address it a little bit more in a moment.

24 I want to cover the issue of what was  
25 going on in Judge Holder's life and what was

1 going on in Judge Holder's office during  
2 December and early January 1997/'98.

3 You'll recall Judge Holder on direct  
4 examination, when asked if it was a stressful  
5 time, he said, "No, it wasn't stressful, it was  
6 just very active." But we know they were in  
7 the process of the move from the juvenile  
8 division to the civil division, that he carried  
9 some very important cases from the juvenile  
10 division with him. He was facing the deadline  
11 on this paper, and he was also in the throes of  
12 holidays, which obviously interferes with  
13 everyone's work schedule.

14 He had as his legal assistant -- and  
15 we've seen her testify -- Ms. Lorraine Nasco.  
16 Ms. Morgan said she was on medications, that  
17 she was under stress, that she was taking  
18 painkillers. Her words were, "She was zonked  
19 out. She was a wreck."

20 You'll recall in my cross examination of  
21 Ms. Nasco, I asked her if she had not told  
22 Colonel Leta, and she acknowledged that she  
23 had, that, "During this period of time, I was  
24 so angry at him, I didn't want to look at him,  
25 talk to him, I just wanted out." I think that

1 reflects the state of mind of Ms. Nasco at that  
2 time.

3 And Judge Holder, confronted with the  
4 statement he gave to Colonel Leta, admitted  
5 that he had told Colonel Leta, "This was a very  
6 stressful time for me, very chaotic," that he  
7 had a tremendous, tremendous workload and his  
8 focus was different than on this paper.

9 Ms. Nasco also testified that she didn't  
10 remember at one point -- and then later did --  
11 typing the paper during the vacation period.  
12 And she said -- she told Colonel Leta she  
13 didn't remember ever typing a paper on World  
14 War II.

15 I think you can say or conclude that  
16 with respect to Ms. Nasco, that given her own  
17 physical limitations, given the situation that  
18 she is in -- or she was in and still is, that  
19 her testimony is not to be accepted on its face  
20 value.

21 I want to speak briefly on the experts.  
22 The expert in this case rapidly -- not rapidly,  
23 after the last continuance mostly -- turned  
24 into a case involving a whole lot of experts.  
25 We presented -- unfortunately, it had to be by

1 deposition -- the testimony of Linda James,  
2 recognized expert in forensic document  
3 examination, who testified that she saw nothing  
4 in the document, meaning 2-A, to suggest that  
5 the alterations were made to either the print  
6 or the text.

7 And she elaborated on that, and her  
8 opinions were taking into consideration a  
9 number of things. One is the total amount of  
10 the material -- that is, the print, and the  
11 handwriting -- taking into consideration that  
12 they were consistent having studied it under  
13 the microscope throughout. The handwriting was  
14 natural and that there was no evidence of  
15 stairstepping in the document.

16 Now, if you read her deposition, she  
17 talks at length about stairstepping. And I  
18 believe we heard from Mr. Kloskowski on the  
19 issue of stairstepping. Their theory is this  
20 paper was scanned in using a digital scanner,  
21 and then the words were -- or that the  
22 handwriting was scanned in and then placed on  
23 this paper. And, according to even  
24 Mr. Kloskowski, unless you use a very high  
25 resolution of what he referred to as the DPI,

1       you're going to find in the digital something  
2       called stairstepping.

3               In reading Ms. James' deposition, you  
4       will see that before they came up with  
5       Mr. Kloskowski, they had two experts, a man and  
6       a woman, husband and wife, named Williams from  
7       San Antonio, who faked a paper, took the words,  
8       moved it around, put words from the Gettysburg  
9       Address into the paper just to show how easy it  
10      was.

11             But the exhibits to Ms. James' deposition  
12      show also how easy that was to detect both the  
13      stairstepping and inability, when you were  
14      trying to line up the additional type, for  
15      example, in "Four score and seven years ago,"  
16      it didn't line up, and a competent documents  
17      examiner can identify an attempt like that to  
18      fabricate a paper.

19             So that engendered a lot of response in  
20      the form of experts from the respondent. And I  
21      won't take the time to go through only except  
22      in the most general detail. Mr. DeKraker, a  
23      questioned documents examiner, concluded that a  
24      paper could be fabricated using the computer,  
25      you'd have to retype the paper and then move



1 the handwriting on it by Photoshop.

2 He also testified that staple holes were  
3 inconsistent in the paper. And I suggest to  
4 you that as many times as these papers have  
5 been stapled and unstapled, at least certainly  
6 going back to the U.S. Attorney's Office, I'm  
7 not quite sure what all of that proves.

8 His conclusion was: To achieve a fake  
9 paper, fabricate a paper, it would require  
10 somebody that was thoroughly skilled in  
11 computers with knowledge of the military  
12 issues, access Photoshop and would have to be  
13 operated at a fairly high skill level to  
14 achieve all of these results.

15 Mr. Greetham, the English gentleman, this  
16 is where we go from what is the theoretically  
17 possible in faking a paper to something that's  
18 almost, I submit to you, surreal. He was  
19 brought here to prove that the backup tapes had  
20 been or could have been fabricated, but the  
21 problem with his analysis is the time line.

22 Because, in order to fabricate what's on  
23 the backup tapes, the H drive and the zero byte  
24 file, the would-be fabricator, the would-be  
25 conspirator out to get Judge Holder, would had

1 to have either, one, if the fabrication was  
2 going on an open -- in other words, before the  
3 final backup had been run, it would have to  
4 have been done sometime no later than December  
5 of 1998.

6 And we don't have any evidence and Judge  
7 Holder has not suggested there's any evidence  
8 to show that there was a conspiracy to get back  
9 at him that went back to 1998. Or, as he  
10 admits, the fabricator, the conspirator, would  
11 had to have gotten access to -- physical access  
12 to these backup tapes, which we know maybe were  
13 not in the most secure place they could have  
14 been. But they were in a safe, in an office in  
15 the tech department of the courthouse. And  
16 they would have had to go into that safe, take  
17 the tapes and take them somewhere and, at that  
18 point, either reproduce them and sneak them  
19 back into the courthouse or in some fashion  
20 undertake to complete this modification of the  
21 tapes.

22 It sounds like a pretty fantastic theory  
23 to me, and I must say to you that in connection  
24 with this conspiracy theory, it would have  
25 taken a very ingenious conspirator to realize,

1 not only can we do the simple thing of creating  
2 this paper and saying it's Judge Holder's paper  
3 to know that they've got to go back to the  
4 backup tapes all the way back to 1998 in the  
5 Hillsborough County Courthouse and, not only  
6 fabricate the Holder paper, but fabricate the  
7 documents on this H drive.

8 Mr. Kloskowski was the very bright young  
9 man that knows a lot about Photoshop. And to  
10 him it's very easy to manipulate these words  
11 around on a piece of paper and match them up  
12 with the text. But he admitted it took a lot  
13 of planning to accomplish this, not the  
14 physical moving the words around on the text.  
15 You have to prepare the text, you'd have to  
16 obtain the handwriting. There'd be a great  
17 deal of effort that would have to go into  
18 setting this up to achieve what apparently is  
19 pretty easy to accomplish on Photoshop once  
20 you've had all that planned and accomplished.

21 I'd like to speak a little bit about  
22 Mr. Vento only because when he gave his  
23 affidavit a year or so ago, he was a fact  
24 witness, in essence, that said he had read --  
25 he had gotten a copy of Judge Holder's paper,

1 and now he looked at this one and all he could  
2 say is, "I don't believe they're the same  
3 paper."

4 Then when he appeared for his videotape  
5 deposition, he read the paper again. And all  
6 of a sudden, he was an expert on military  
7 history, an expert on the preparation of Air  
8 War papers and had come to a conclusion he was  
9 certain this was not the same paper. He went  
10 from being a fact witness but some sort of a  
11 pseudo-expert and an advocate for his friend  
12 Greg. And he cited a number of examples of  
13 why, in his opinion, this could not possibly  
14 be -- that is, 2-A -- Judge Holder's paper.

15 One he cited was on Page 11, a sentence  
16 that reads, "The first raid of the CBO took  
17 place on August 17, 1942 with 12 B-17s  
18 attacking the French city of Rouen dropping  
19 18.5 tons of bombs."

20 He says, "That's wrong. The first CBO  
21 raid could not have taken place on August 17,  
22 1942 because the CBO campaign did not begin  
23 until after a conference in Casablanca which  
24 was in January of 1943." He's right.

25 And look at Page 11, the grader writes on

1           there over the date, August 1942, and  
2           underlines "42," "How could this be?  
3           Casablanca wasn't even until January 1943."

4                 Now, these fabricators are ingenious.  
5           They put incorrect information in there and  
6           then put handwritten comments to point out it's  
7           incorrect.   Fantastic.

8                 Another example on Page 13 is where in  
9           2-A there's a reference to the Battle of  
10          Britain saying, "In 1943, the British launched  
11          the campaign known as the Battle of Britain  
12          lasting four and one-half months including 35  
13          major raids using an average of more than 500  
14          bombers per mission."

15                Mr. Vento says, "That's wrong.   The  
16          Battle of Britain was in 1940," and he's right.  
17          Even I know that, and so did the grader,  
18          because the grader writes, "Wrong.   The Battle  
19          of Britain was in the summer of 1940."   He  
20          underlines the word "Britain" and says, "Berlin  
21          is what I think you meant."

22                So again, if this is a fabricated paper,  
23          ingenious.   Put a misstatement in there and  
24          then have the grader catch it and correct it.  
25          He also says, Mr. Vento, that there are several

1        comments on the paper where the handwriting  
2        does not correspond to and is not consistent  
3        with or relevant to the text, and he cites Page  
4        6, the section on the limits of military power,  
5        and says, "However" -- this is the text of the  
6        paper.

7                "However, the full impact of Allied  
8        resources was depleted or at least delayed by  
9        the diversion into North Africa in late 1942,  
10       which committed many heavy bombers intended  
11       for use in Europe." The note is, "This is  
12       historical background information, not CBO,  
13       which is the topic of this section."

14               Well, what Mr. Vento is doing is trying  
15       to put himself in the mind of the grader,  
16       because, in fact, it's equally reasonable to  
17       say, in fact, this is historical information,  
18       that the resources to be used in the combined  
19       bomber offensive were depleted in North Africa.  
20       That is, in fact, a historical fact.

21               What I'm saying to you is that Mr. Vento,  
22       in his zeal to assist Judge Holder, reached his  
23       own conclusions that are really not supported  
24       by the evidence when you make a study of the  
25       document.

1           Now, I do want to turn a little bit to  
2           the conspiracy itself, the claim that this is a  
3           fabricated paper. One, basically the timing  
4           doesn't really work. The paper -- according to  
5           Judge Holder, the two papers went missing out  
6           of his desk drawer sometime in 2001. We know  
7           that Judge Bonanno didn't take the paper  
8           because he was found in Judge Holder's office  
9           in July of 2000 and nothing was missing.

10           The paper was slipped under the door of  
11           Mr. Del Fuoco in January of 2002, and we can  
12           see by Petitioner's Exhibit 30, the letter that  
13           Judge Holder wrote to the Department of  
14           Justice, that he didn't begin -- if you believe  
15           that letter, he didn't begin participating in  
16           the undercover investigation until at least a  
17           month later.

18           He now claims that the dates on that  
19           letter are a mistake, that he wrote the letter  
20           sometime and sent it out at a later date and  
21           didn't bother to check the accuracy of the  
22           letter, very un-Holder-like. He says that the  
23           investigation or his participation really began  
24           in September of '01.

25           But it's clear, I believe, and you can

1           only conclude the conspiracy could not and did  
2           not begin in the 1997/1998 period, and  
3           therefore this whole business about fabricated  
4           backup tapes really doesn't fit within the time  
5           line.

6                     Again, how could the person, if there was  
7           such a person out to get Judge Holder, know  
8           that they had to get ahold of these backup  
9           tapes and fabricate them in order to create a  
10          paper which would hold up to scrutiny?

11                    The simple conspiracy is that someone by  
12          some means -- maybe coming in and taking them  
13          from Judge Holder -- took the two papers from  
14          Judge Holder's desk, looked at them and saw  
15          that one was the Hoard paper and the other one  
16          was Judge Holder's paper, and by comparison,  
17          maybe they knew from somebody who told them who  
18          had been typing the paper there had been  
19          plagiarism and simply took the two papers and  
20          slipped them under Mr. Del Fuoco's door.

21                    The more complicated conspiracy is the  
22          same as above, except you take what is Judge  
23          Holder's paper and then create the fabricated  
24          paper. Again, you need access to the H drive.  
25          You need the grader's handwriting. You need to



1 match the handwriting to the text. You need  
2 the skill and technical knowledge to achieve  
3 all of this, which, at best, it may have been,  
4 by one estimate, only a thousand people. It  
5 may sound like a lot -- but I doubt if it is --  
6 here in the Tampa area, and each step of the  
7 way would need to be carefully planned.

8 And you ask yourself, why would someone  
9 go to all of this trouble? How is this a way  
10 to embarrass Judge Holder if you slip it under  
11 Mr. Del Fuoco's door? He's known as an  
12 aggressive public prosecutor. But that's  
13 certainly not a very surefire way to start an  
14 investigation that's going to end up in some  
15 public disclosure to embarrass Judge Holder.

16 And Del Fuoco, as much as they want to  
17 make him the center of their conspiracy theory,  
18 never acted in any way that was consistent with  
19 the idea that he was participating in any  
20 conspiracy. He said he didn't even know Judge  
21 Holder, he had nothing against Judge Holder.

22 And when he got the papers, he did not  
23 aggressively pursue any investigation. He put  
24 them in a file. He had a conversation with two  
25 Air Force investigators, but because it was

1 going to be necessary to take the matter up the  
2 line and put this out at least as publicly, as  
3 far as the internal Air Force staff is  
4 concerned, that it wasn't pursued. He had no  
5 motive. There has never been any suggestion of  
6 any motive by Del Fuoco to participate in any  
7 conspiracy to fabricate a paper.

8 And his conduct and the way he handled  
9 these papers was certainly inconsistent with  
10 his having been involved in any plot or play  
11 any role to embarrass or to get Judge Holder  
12 because he really did nothing with the papers,  
13 ultimately turned them over to Mr. Downing, who  
14 did a little more with them than he did, and  
15 then turned them over to the Judicial  
16 Qualifications Commission.

17 So I suggest to you that as much as they  
18 would like to focus their case upon Mr. Del  
19 Fuoco, that the evidence simply does not  
20 support a contention that he is somehow  
21 nefariously involved in a conspiracy to get  
22 Judge Holder. The more simple explanation is:  
23 Someone, someone wanted to get Holder. Someone  
24 got ahold of Holder's paper and the Hoard paper  
25 and slipped them under Mr. Del Fuoco's door.

1           Now, we believe that on the facts -- and  
2 most of the facts I have outlined to you are  
3 essentially without dispute. Some of them are  
4 contested. But those facts that we do know and  
5 have shown, we believe, does establish by clear  
6 and convincing evidence that the paper that is  
7 2-A, marked as 2-A, is the paper submitted by  
8 Judge Holder to the Air War College.

9           The theory that it's a fabricated paper,  
10 that it's a product of a conspiracy is sheer  
11 speculation. The testimony, "It could have  
12 been this done, it could have been done that  
13 way, this could have been done, that could have  
14 been done," is all speculation.

15           The responsibility of this panel is to  
16 find the truth. And I don't envy your task. I  
17 admit this is not an easy case, never was an  
18 easy case. But if the evidence convinces you  
19 that this is an authentic paper, you should  
20 find Judge Holder guilty.

21           If it doesn't, if you find the charges  
22 have not been proven, you could find him not  
23 guilty. And I will and you will have served  
24 your role and your function in our justice  
25 system. Thank you.

1 THE COURT: Thank you, counsel. You have  
2 25 left for rebuttal.

3 (End of closing by Mr. Pillans. Mr.  
4 Weinstein's closing follows, which has not been  
5 transcribed for this excerpt.)

6 (Mr. Pillans' rebuttal closing begins.)

7 MR. PILLANS: I'll hold to my promise of  
8 being brief. I commend Mr. Weinstein and his  
9 team of lawyers. You can see what a team of  
10 fine lawyers from Tampa and a large law firm in  
11 Washington is capable of putting together, and  
12 they've done a magnificent job.

13 When I started out practicing law almost  
14 40 years ago, I did sitting second or third  
15 chair to one of the finest criminal lawyers in  
16 the state of Florida, Chester Bedell, and I was  
17 primarily a criminal defense lawyer for the  
18 first 20 years of my practice in complex  
19 federal cases.

20 And the one thing I learned was what you  
21 do is deflect attention from the facts  
22 presented by the government and find somebody  
23 else to blame, find somebody else to try. It's  
24 a well-worn and sometimes effective philosophy.  
25 We used to have an interesting colloquy with

1 the assistant U.S. attorneys. We would be  
2 attacking their motives, their method of  
3 prosecution, their decision to prosecute or  
4 whatever, and they'd say, "You can't attack the  
5 government."

6 And our response was, "Well, if you're  
7 not going to try the government, who are we  
8 going to try in this case? We certainly don't  
9 want to try the defendant. We want to divert  
10 attention."

11 Intense in this case -- I submit to you  
12 that in this case, the respondent has chosen to  
13 attack Jeffrey Del Fuoco over and over again,  
14 accuse him of being a liar, accusing him --  
15 actually they have finally come out and said in  
16 so many words unequivocally he is the person  
17 that is involved in fabricating the evidence.  
18 And I'll come back to that.

19 First I want to touch on a few of the  
20 points that were made in closing argument. One  
21 is: They said that JQC's case is based on a  
22 faulty premise that Judge Holder could not  
23 multi-task, that he couldn't handle the time  
24 pressures and that that was inconsistent with  
25 his character.

1 I point out to you that the first test he  
2 took, he failed. He didn't even read the  
3 papers. He was going to try to skate by.  
4 That's consistent with what he did in  
5 connection with taking the Air War College  
6 course.

7 I can't quote you the specifics, but  
8 there was more than one, maybe at least three  
9 of these people who had information that they  
10 gave Judge Holder advice about the paper, said,  
11 "It's just a form. Don't take it too  
12 seriously. Just slam something together, get  
13 it done, don't spend a lot of time on it."  
14 People told him over and over again. "Don't  
15 take this thing too seriously."

16 As I told you they must, in closing  
17 argument, they said the H drive paper is  
18 obviously a plant. That is the one that's the  
19 Hoard paper. And they have to say that because  
20 their whole theory, they have to show that  
21 there was some fabrication going on back in  
22 nineteen ninety -- late 1997 or early 1998 or  
23 certainly no later than December of 1998.

24 And they have to come in and say, as I  
25 explained in my opening -- closing argument,

1           that is, they had to attack that paper. And I  
2           submit to you that they did not do it  
3           convincingly. They make the point that there  
4           was no evidence that Judge Holder ever gave his  
5           graded paper away, gave it to anybody. It was  
6           the other people, the people who got a copy of  
7           his ungraded paper. We don't disagree with  
8           that.

9                     We believe the evidence establishes that,  
10           indeed, the graded paper went missing from his  
11           office in 2001, or that's the date he puts on  
12           it. And that's the source of the paper that is  
13           in evidence today, Exhibit 2-A. So that really  
14           comes to nothing.

15                    He says there's a lack of a final grade  
16           on the paper. There's also the lack of a final  
17           grade on Mary Perry's paper. And Colonel Howe  
18           testified it was not required and, although he  
19           usually did it, there were times obviously when  
20           he did not do it.

21                    A distinction tried to be drawn between a  
22           marginal paper and a satisfactory paper.  
23           Satisfactory is the grade because that's within  
24           the grading system. But both Colonel Howe and  
25           Judge Holder agreed that his paper was a

1 marginal paper. The one that Howe saw was a  
2 marginal paper. The one that Judge Holder  
3 wrote was a marginal paper.

4 Now, we are told about five eyewitnesses  
5 that they brought to you. But you have to  
6 remember, we're talking about five eyewitnesses  
7 who saw a paper five years ago, six years ago  
8 and now look at another paper or a paper five  
9 or six years later and say, "That's not the  
10 same paper."

11 A lot of time has passed, unfortunately,  
12 for all of us. But that colors -- raises a  
13 question as to whether they can truly say that  
14 the paper they saw five or six years ago is not  
15 the paper that was shown, a copy of the paper  
16 that's now 2-A.

17 They talk about Ken Lawson and what was  
18 or was not given to Ken Lawson. Remember also,  
19 in addition to the Mary Perry paper and the  
20 Holder paper that are there, he was also given  
21 all of the dirty purples for the first, at  
22 least, portion of the course. You take a  
23 program guide and compare it to those dirty  
24 purples and you say they are the ones that  
25 correspond to the lessons that were being given



1 during that time, and they have Judge Holder's  
2 name on them. And they appear to be actually  
3 Judge Holder's dirty purples, the one he gave  
4 to Ken Lawson.

5 It said that Judge Holder was not under  
6 any time pressure because our time line -- that  
7 is, the JQC's special counsel's time line --  
8 doesn't work. Judge Holder could have written  
9 the paper in the second semester, but it would  
10 have had to have been on a different topic. It  
11 would had to have started all over again. He  
12 could not have submitted a used, whatever work  
13 he did do -- and we're not claiming he didn't  
14 do work.

15 What we believe the evidence shows is  
16 that he did prepare portions of his paper, he  
17 did do research. But he came into a time  
18 crunch in the end, and he cut corners by  
19 preparing the paper. He cut it down and he cut  
20 corners while preparing the paper by taking  
21 portions of the paper of Colonel Hoard that was  
22 on the H drive.

23 There's a claim that somehow the chain of  
24 custody of the paper that is 2-A, the paper  
25 that we submit was submitted to the Air War

1 College -- but, if you'll recall the testimony,  
2 Mr. Del Fuoco got it, he brought it to the U.S.  
3 Attorney's office. He put it in a file, he  
4 testified that that was the file he turned over  
5 to Mr. Downing. Mr. Downing retained  
6 possession of it until he turned it over to me  
7 at a deposition, and I brought it here to court  
8 at the beginning of these proceedings. There  
9 has been no break in the chain of custody.

10 Finally, and I think I need to deal with  
11 this specifically. As I said, this whole case,  
12 we believe, is about a fantastic conspiracy  
13 that just couldn't have happened. The paper  
14 could not have been fabricated in that way  
15 because of all of the things that would have  
16 had to have been done. There's just no logic  
17 or sense to saying that this is a fabricated  
18 paper because of what would have been required  
19 to get to the point where they had a paper to  
20 fabricate and to then actually fabricate it.

21 But in closing argument, Mr. Weinstein  
22 says it was Mr. Del Fuoco that manufactured the  
23 paper. We've heard testimony, references to  
24 Judge Bonanno or Judge Alvarez. And maybe the  
25 suggestion was that they had a motive to get

1 Judge Holder. But we've seen no link between  
2 them and Mr. Del Fuoco.

3 Mr. Del Fuoco, as well as Mr. Downing,  
4 testified that when they got the paper, they  
5 didn't actually consider the paper as evidence  
6 itself. It was something to do to begin to use  
7 as a step for a link to conduct an  
8 investigation, an investigation that was  
9 conducted by the JQC through the depositions  
10 and the inquiries and the searches of the  
11 computers to present to you the evidence that  
12 was presented.

13 Now, again, attacking Jeffrey Del Fuoco,  
14 they say that he was untruthful about the fact  
15 that he headed the public corruption  
16 investigation. But the other side of that coin  
17 is, if he did head it up and if he was part of  
18 some conspiracy, if he had a motive to get  
19 Judge Holder as the head of that public  
20 corruption investigation in which Judge Holder  
21 was cooperating, he would have been in a  
22 perfect position to get Judge Holder, to stop  
23 that investigation, to raise the issue of Judge  
24 Holder's integrity or credibility by reason of  
25 the fact that he was in possession of a paper

1 that had all the appearance of being one that  
2 was plagiarized by Judge Holder. And he didn't  
3 do any of that.

4 And they failed, in their attacks upon  
5 Mr. Del Fuoco, to bring to you any motive.  
6 What reason would he have had? Why did he do  
7 it? Whatever you might say about Mr. Del  
8 Fuoco, he is a zealous public prosecutor  
9 focusing on public-corruption cases. He's  
10 become controversial as a result of that. But  
11 to suggest to you that he had some motive to  
12 derail a public-corruption case, there's just  
13 no basis. There's no facts and no logic to  
14 such an argument. That's the argument they've  
15 had to make. I think it failed.

16 I believe when you analyze the evidence  
17 as I outlined it to you at the beginning of my  
18 closing argument, the undisputed facts, which I  
19 went through step by step, do establish that  
20 the paper, 2-A, is, in fact, Judge Holder's  
21 paper submitted to the War College, and that  
22 has been established by clear and convincing  
23 evidence. Thank you.

24 (End of excerpt)  
25

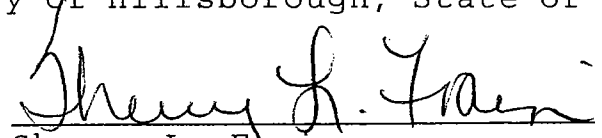
## CERTIFICATE OF REPORTER

STATE OF FLORIDA:

COUNTY OF HILLSBOROUGH:

I, Sherry L. Frain, Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the foregoing proceedings at the time and place therein designated; that my shorthand notes were thereafter reduced to typewriting under my supervision; and that the foregoing pages are a true and correct, verbatim record of the aforesaid proceedings.

Witness my hand and seal February 13, 2006, in the City of Tampa, County of Hillsborough, State of Florida.

  
Sherry L. Frain  
Notary Public  
State of Florida at Large

